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Torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, submitted in accordance with Assembly resolution 67/161.

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Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Summary

In the present report, submitted pursuant to General Assembly resolution 67/161, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment addresses issues of special concern and recent developments in the context of his mandate.

The Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, are considered to be among the most important soft-law instruments for the interpretation of various aspects of the rights of prisoners. Adopted in 1955, some of the provisions of the Rules are now dated. The ongoing review process of the open-ended intergovernmental Expert Group on the Standard Minimum Rules is an opportunity to enhance understanding of the scope and nature of the prohibition against torture and other ill-treatment, the contexts and consequences in which they occur and effective measures to prevent them.

In this report, the Special Rapporteur reflects on targeted areas of review and offers a set of procedural standards and safeguards from the perspective of the prohibition of torture or other ill-treatment that should, as a matter of law and policy, be applied, at a minimum, to all cases of deprivation of liberty.

Not only do certain areas of the Rules require updating in the light of developments in international law, but Governments must renew their commitment to adequately addressing the needs of persons deprived of liberty, with full respect for their inherent dignity and their fundamental rights and guarantees, in order to enhance the implementation of the Rules and the minimum standards contained therein.

I. Introduction

1. The present report, submitted pursuant to paragraph 41 of General Assembly resolution 67/161, is the fifteenth to have been submitted to the General Assembly by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

2. The Special Rapporteur wishes to draw attention to the reports he has submitted to the Human Rights Council at its twenty-second session (A/HRC/22/53 and Adds.1-5).

II. Activities related to the mandate

A. Country visits

3. The Special Rapporteur regrets that the country visit to Bahrain planned for 2013 was postponed by the Government, for a second time at very short notice. Because the Government did not provide alternative dates, the Special Rapporteur considered the postponement to be, in effect, a cancellation. Nevertheless, the Special Rapporteur continues to engage with the Government to secure dates for a visit in 2014.

4. The Special Rapporteur welcomes the invitation from the Government of Ghana to conduct a country visit during the fourth quarter of 2013 and awaits confirmation of the specific dates proposed.

5. The Special Rapporteur regrets that country visits to Guatemala and Thailand planned for 2013 have been postponed, for the second time, at the request of the respective Governments. He is engaged with the Governments to secure dates for the fourth quarter of 2014.

6. The Special Rapporteur has insisted on a request for an invitation by the Government of the United States of America to visit the detention centre at Guantanamo Bay, Cuba, on conditions that he can accept. His request to visit United States prisons on the mainland, renewed on 15 May 2013, is still pending.

7. The Governments of Georgia and Mexico have extended invitations to visit and the Special Rapporteur is engaged with both States regarding dates. The Special Rapporteur, with support from the Anti-Torture Initiative of the Center for Human Rights and Humanitarian Law of the American University in Washington, D.C., plans to conduct follow-up visits to Tajikistan and Tunisia in 2014.

B. Highlights of presentations and consultations

8. On 13 February 2013, the Special Rapporteur gave a keynote speech on the theme "The United Nations and torture: dealing with the work of rehabilitation" at a symposium of the National Consortium of Torture Treatment Programs, held at George Washington University, Washington, D.C.

9. On 1 March 2013, the Special Rapporteur addressed the New York City Bar Association on prolonged solitary confinement.

10. Between 4 and 7 March 2013, the Special Rapporteur presented his reports to the Human Rights Council at its twenty-second session (A/HRC/22/53 and Adds.1-5) and participated in side events on the themes "Accountability for torture and extraordinary rendition", "Solitary confinement and the death row phenomenon", "Towards preventing torture and ill-treatment in health-care settings", "Impact of violence on children's right to health" and "Mental and physical health in juvenile detention".

11. On 12 March 2013, the Special Rapporteur appeared before the Inter-American Commission on Human Rights, in Washington, D.C., regarding the abuse of solitary confinement in the Americas.

12. On 22 March 2013, the Special Rapporteur participated, by video link, in a symposium on the theme "Ending the isolation: an international conference on solitary confinement and human rights", held at the University of Manitoba, Winnipeg, Canada.

13. On 9 April and 7 May 2013, the Special Rapporteur participated in events commemorating the twenty-fifth anniversary of the Committee against Torture and the adoption by the Committee, in 2012, of its general comment No. 3, on redress for victims of torture and other acts of ill-treatment, held in Washington, D.C., and Geneva.

14. On 15 April 2013, the Special Rapporteur participated in a conference on the theme "Litigation before the Committee against Torture: strengthening this important tool against torture", held at the Washington College of Law, American University, Washington, D.C.

15. On 16 April 2013, the Special Rapporteur participated in a panel discussion on the theme "Youth in solitary confinement: facts, justifications and potential human rights violations", also held at the Washington College of Law.

16. On 6 June 2013, the Special Rapporteur gave a keynote address at an event entitled "International congress on torture and cruel, inhuman or degrading treatment or punishment", held in Buenos Aires.

17. Also on 6 June 2013, the Special Rapporteur addressed, by video link, an international symposium on torture as a global challenge, held in Helsinki.

18. On 25 and 26 June 2013, the Special Rapporteur participated in two symposiums to commemorate the International Day in Support of Victims of Torture, held in Washington, D.C.

19. On 10 July 2013, the Special Rapporteur convened an expert meeting on the review of the Standard Minimum Rules for the Treatment of Prisoners, held at the University of Oxford, United Kingdom of Great Britain and Northern Ireland.

20. On 17 July 2013, the Special Rapporteur participated in a policy dialogue on poverty and the rehabilitation of survivors of torture in the United Kingdom, held at the House of Commons, in London.

III. Review of the Standard Minimum Rules for the Treatment of Prisoners

A. Overview

21. Since their adoption in 1955, the Standard Minimum Rules for the Treatment of Prisoners have retained considerable weight as an authoritative set of generally accepted principles and practices for the treatment of prisoners and the management of penitentiary institutions. Even though some provisions are now dated, the Rules continue to be vital and are considered to be among the most important soft-law instruments for the interpretation of various aspects of the rights of prisoners.

22. The Special Rapporteur notes that, whether in response to evolving threats and practices or simply because of neglect, Governments are often remiss in upholding these standards. The present report contains specific recommendations aimed at updating the Rules to ensure the humane treatment of persons in detention and advocates for their effective implementation at the global level.

23. The international and regional systems that oversee prison conditions operate largely with a view to preventing torture and other ill-treatment. The Special Rapporteur recalls that, as explained in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses.

24. In paragraph 10 of its resolution 65/230, the General Assembly requested the Commission on Crime Prevention and Criminal Justice to establish an open-ended intergovernmental expert group to exchange information on best practices and on the revision of existing United Nations standard minimum rules for the treatment of prisoners so that they reflect recent advances in correctional science.

25. The first meeting of the Expert Group established in response to that request was held in 2012 and attended by 143 representatives from 52 States (see UNODC/CCPCJ/EG.6/2012/1, para. 9). At that meeting, there was general agreement that although the Rules had stood the test of time and were universally acknowledged as the minimum standards for the detention of prisoners, some areas of the Rules needed to be reviewed (paras. 4 and 5). The consensus among the Expert Group was that any changes to the Rules should not lower any of the existing standards (para. 4). Moreover, the Expert Group identified nine preliminary areas for possible review (para. 5). The Economic and Social Council, in its resolution 2012/13, and the General Assembly, in its resolution 67/188, subsequently took cognizance of the recommendations of the Expert Group and took note of the areas identified for review. At its second meeting, held in Buenos Aires in December 2012, the Expert Group made substantive progress and identified issues for further discussion within the targeted areas (UNODC/CCPCJ/EG.6/2012/4). By its resolution 2013/35, the Council again took into consideration the nine areas identified for revision and decided to extend the mandate of the Expert Group, authorizing it to continue its work with a view to reporting to the Commission on Crime Prevention and Criminal Justice at its twenty-third session. In that same resolution, the Council invited Member States to continue to be engaged in the revision process by submitting proposals and to participate actively in the next meeting of the Expert Group, to be held in Brazil towards the end of 2013.

26. In the following sections, the Special Rapporteur examines the nine targeted areas (see General Assembly resolution 67/188, para. 6) and offers a set of procedural standards and safeguards from the perspective of the prohibition of torture and other ill-treatment that should, as a matter of law and policy, be applied, at a minimum, to all cases of deprivation of liberty.

B. Targeted review of preliminary areas: minimum set of procedural principles and safeguards

Scope and application of the Rules

27. While the Rules focus mainly on the situation of persons deprived of liberty in prisons, pretrial detention centres and police stations, in practice, States' obligations to ensure respect for human rights extend beyond police custody and prisons. The broad concept of deprivation of liberty is reflected in several international instruments, including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in which "deprivation of liberty" is understood to mean any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority (art. 4 (2)). The language used by the Inter-American Commission on Human Rights is also enlightening. By its resolution 1/08, the Commission understands the concept of "deprivation of liberty" to encompass the following:

> Any form of detention, imprisonment, institutionalization or custody of a person in a public or private institution which that person is not permitted to leave at will ... This category of persons includes ... those persons who are under the custody and supervision of certain institutions, such as: psychiatric hospitals and other establishments for persons with physical, mental or sensory disabilities; institutions for children and the elderly; centers for migrants, refugees, asylum or refugee status seekers, stateless and undocumented persons; and any other similar institution the purpose of which is to deprive persons of their liberty.

For the purpose of this report, the broad term of persons deprived of liberty will be used to refer to all the above-mentioned situations.

28. Although Rule 95 clarifies that the scope of Rule 4 (1) extends to all persons deprived of their liberty, it is nevertheless important to make it explicit that the Rules are effectively applicable to all persons under any form of detention or imprisonment, whether for criminal or civil reasons, whether the person is detained prior to trial, while on remand or after conviction, or whether the individual is subject to so-called special security measures, administrative or corrective measures, or immigration-related measures. The Special Rapporteur urges that it be made explicit that the Rules are applicable to all forms of deprivation of liberty, without exception and regardless of the legal status of the imprisoned person. Furthermore, the Rules shall be applied (Rule 6 (1)) to all arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, with no discrimination, on grounds of international law, for example on grounds of age, national, ethnic or social origin, cultural beliefs and practices, birth or other status, including health status, disability, gender or other identity and sexual orientation (see Human Rights Council resolution 17/19 and Human Rights

Committee general comment No. 18, para. 7), as well as labelling on grounds of psychological profile or criminal past.

29. Similarly, in line with general comment No. 2 of the Committee against Torture, the Rules apply irrespective of whether the detention facilities are run by State or private companies (paras. 15 and 17). Authorities should ensure that the Rules and the principles stipulated therein are observed in all institutions and establishments within their jurisdiction where persons are deprived of liberty. The Rules should ensure that, in cases where certain services are outsourced, the State remains responsible for the adequacy of those services.

30. Furthermore, the provisions in the Rules governing the transfer of detainees from one authority to another should be strengthened. The duties of the State should be extended to the following circumstances, among others: the transfer of prisoners from one establishment to another; judicial proceedings; and hospitals outside the confines of an institution of detention. Even when the administration of a facility is not in charge of ordering a transfer, it is nevertheless acting in an official capacity on account of its responsibility for carrying out the State's obligation to prevent torture and ill-treatment, and bears responsibility for permitting or participating in the transfer of a person to the custody or control of an individual or institution known to have engaged in torture or ill-treatment, or for not implementing adequate safeguards, in contravention of the State's obligation to take effective measures to prevent torture or other ill-treatment (Committee against Torture general comment No. 2, para. 19).

31. Thus, regardless of which authority is competent to authorize and/or execute transfers, the authority releasing the detainee, as guarantor of the right to life and humane treatment of the persons under its custody, must act with due diligence and objectivity in assessing potential risk factors and the feasibility of the transfer, and must inform the judge in charge, prior to carrying out the transfer, to give him or her the opportunity to overturn said transfer. The Rules should allow for available, suitable and effective judicial remedies to challenge transfers when it is believed that they infringe on the human rights of inmates.[1]

32. The Special Rapporteur fully endorses the proposal by the Expert Group to include a new preamble that would include a list of the fundamental principles contained in already adopted treaties and guidelines regarding treatment in detention (see Rule 3 and E/CN.15/2012/CRP.2, sect. 4). Some proposed preambles (for example, that proposed in UNODC/CCPCJ/EG.6/2012/NGO/1), however, refer to instruments that set out standards that fall short of those recognized in subsequent instruments; these earlier instruments should not, therefore, be cited in the Rules. For instance, the standards set out in the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (1991), have, in various important respects, been superseded by the higher standards set out in the Convention on the Rights of Persons with Disabilities (see A/HRC/22/53, para. 58).

33. It is crucial to recognize explicitly the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment in all circumstances. Such an explicit recognition should be included both in the preamble and, through a revision, in Rule 6, dealing with respect for inmates' inherent dignity and value as human

[1] Inter-American Commission on Human Rights, *Report on the Human Rights of Persons Deprived of Liberty in the Americas* (2011). Available from www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf.

beings. As a widely recognized set of rules addressing the administration of penal institutions, the Rules should explicitly condemn torture and ill-treatment, including participation, complicity, incitement and attempts, and certain conduct that amounts to ill-treatment, whether committed by public officials, by other persons acting on behalf of the State or by private persons (Convention against Torture, art. 4). The Rules should also declare unambiguously that no exceptional circumstances whatsoever may be relied upon to justify acts of torture and other ill-treatment by public officials, that offenders will not be tolerated and that offenders will be subject to prosecution. Naming and defining this crime will promote the aim of the Convention against Torture, inter alia, by alerting everyone to the special gravity of the crime of torture (see Committee against Torture general comment No. 2, paras. 5 and 11).

34. Furthermore, in order to ensure that the absolute prohibition of torture and other ill-treatment is enforced as an effective means of prevention, the proposed preamble and subsequent procedural rule should declare unambiguously that the State's obligation to prevent torture also applies to all persons who act, de jure or de facto, in the name of, in conjunction with or at the behest of the State party (Committee against Torture general comment No. 2, para. 7). The Committee against Torture has stated the following:

> ... an order of a superior or public authority can never be invoked as a justification of torture. ... At the same time, those exercising superior authority ... cannot avoid accountability or escape criminal responsibility for torture or other ill-treatment committed by subordinates where they knew or should have known that such impermissible conduct was occurring, or was likely to occur, and they failed to take reasonable and necessary preventive measures (general comment No. 2, para. 26).

Respect for prisoners' inherent dignity and value as human beings

35. The principle of humane treatment of persons deprived of liberty constitutes the starting point for any consideration of prison conditions and the design of prison regimes. It complements and overlaps the principle on the prohibition of torture and other ill-treatment by requiring States (and consequently the prison authorities) to take positive measures to ensure minimum guarantees of humane treatment for persons in their custodial care (see Human Rights Committee general comment No. 21, para. 3). Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule, the application of which, at a minimum, cannot be dependent on the material resources available in the State party to the International Covenant on Civil and Political Rights (para. 4). In this regard, the Inter-American Court of Human Rights has consistently affirmed that States cannot invoke economic hardship to justify imprisonment conditions that do not comply with the minimum international standards and respect the inherent dignity of the human being.[2]

36. In the light of this interpretation, the Rules should incorporate a provision urging authorities to adopt specific measures aimed at resolving the structural shortcomings of places of deprivation of liberty and earmark the resources necessary to cover basic needs and work and educational programmes. Furthermore, the Rules should set out concrete measures to be taken to ensure minimum

[2] See, for example, *Vélez Loor v. Panama*, Series C, No. 218, para. 198.

guarantees of humane treatment for persons in custodial care, including securing a prompt and effective judicial control of detention; providing adequate, accessible and appropriate health care; ensuring the availability of appropriate judicial resources and effective complaint systems; and allowing contact with the outside world and access to other activities, including for those awaiting trial.

37. As a rule of general application, the Rules should refrain from transferring inmates to a distant facility (see the Body of Principles, principle 20) or to a facility with much worse conditions as a form of punishment and from placing heavy restrictions on inmates' contact with the outside world, except as incidental to justifiable segregation or the maintenance of discipline (see Rules 57 and 60). Although the Rules highlight the importance for prisoners under sentence of maintaining contact with the outside world (see part II, sect. A), this principle should be of general application for all persons deprived of liberty, including death row inmates, to mitigate the level of suffering that is inherent to the condition of persons sentenced to death[3] and to ensure that the penitentiary system comprises treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation (International Covenant on Civil and Political Rights, art. 10 (3)). Furthermore, the Rules should guarantee that segregation and isolation are not used as a subtle form of punishment and that persons who are segregated or isolated are held in conditions applicable to the rest of the prison or penitentiary population and are subject to the full range of protections. The rationale behind this is that in some countries different forms of prison regimes and forms of segregation are used as additional measures of punishment, for example by excluding those imprisoned for life from work, educational or other activities. In some countries, prisoners serving a life sentence are confined, in virtual isolation, for up to 22 hours a day in small, cramped, unventilated cells, often in extreme temperatures, without any type of prison activities.

38. Given the excessive use of pretrial detention for long periods of time, it is absolutely necessary to ensure that all persons deprived of liberty have access to activities and can benefit from other privileges to which the general prison population is entitled. The Special Rapporteur acknowledges that it may be difficult to implement this principle, given the fairly rapid turnover of persons awaiting trial and the fact that police stations and other detention facilities may not be adapted for this purpose. As the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has noted, however, prisoners cannot simply be left to languish for weeks, possibly months, locked up in their cells (see CPT/Inf (92) 3, para. 47).

39. It is important to consider that the deprivation of the right to individual self-determination is not incidental to criminal punishment or any other form of custodial care. The current phrasing of Rule 57 can be misunderstood as meaning that deprivation of liberty results in the withdrawal of individual self-determination. It may be pertinent to redraft Rule 58 in order to clarify that only reasonable boundaries inherent to the regime in the places of detention apply. Likewise, Rule 69 could be amended to omit the reference to the conduct of a study of the

[3] United Nations Office on Drugs and Crime, *Handbook on Prisoners with Special Needs* (Vienna, 2009), pp. 159-164. Available from www.unodc.org/documents/justice-and-prison-reform/Prisoners-with-special-needs.pdf.

personality of prisoners, as potentially in conflict with the right to personal self-determination.[4]

40. As a principle of general application, the Rules should explicitly consider all inmates as subjects of rights and duties and not objects of treatment or correction. Given that mental ill-treatment may be inflicted under the name of remedial, educational, moral, spiritual and other forces and forms of assistance, the review process offers an opportunity to revisit Rule 59 in order to limit the applicable methods to those respectful of the prisoners' inherent dignity and value as human beings. In this respect, there is a need to revisit the concepts of "rehabilitation" and "re-education", as well as of "corrective" and "correctional", among others, in order to protect persons deprived of liberty from arbitrary intervention or treatment that may amount to torture or other ill-treatment.

41. The Special Rapporteur recalls the importance of introducing a rule allowing all who are deprived of their liberty to challenge expeditiously the lawfulness of the detention, e.g. through habeas corpus or *amparo*, as a safeguard for ensuring protection against torture or other ill-treatment. In all circumstances, the person deprived of liberty should have the right to inform his or her family of the arrest (Rules 44 (3) and 92) and place of detention within 18 hours (E/CN.4/2003/68, paras. 26 (g) and (i)). These rules should apply also to decisions to restrict the personal freedom of an inmate further, for instance by placing him or her in isolation or solitary confinement. In no case may a detainee's contact with the outside world be dependent on his or her cooperativeness, be used as a disciplinary sanction or form part of the sentence. In accordance with principle 19 of the Body of Principles, access to the outside world can only be denied subject to reasonable conditions and restrictions as specified by law (see E/CN.4/2004/56, para. 43).

42. Furthermore, given that safeguards are particularly undermined when the detained persons are held in incommunicado or secret detention, the Rules should place an obligation on prison authorities to ensure that persons deprived of liberty are held in officially recognized and accessible places of detention. Police station chiefs and investigating officers should be held criminally accountable for any unacknowledged custody in cases where their responsibility, including command responsibility, has been established. The Special Rapporteur recalls that whether detention is secret or not is determined by its incommunicado character and by the fact that State authorities do not disclose the place of detention or information about the fate of the detainee (see A/HRC/13/42, paras. 8-10).

43. The maintenance of an official registry has been and remains one of the fundamental safeguards against torture or other ill-treatment. Although Rule 7 provides for an obligation to ensure proper registration, it lacks a provision obliging strict adherence to registration from the very moment of apprehension and transfer to police custody; the duty to have a comprehensive and accessible record of everyone deprived of liberty (International Convention for the Protection of All Persons from Enforced Disappearance, art. 17 (3)); information regarding the time and place of arrest as well as the identity of the arresting officials; the state of health upon arrival at the detention centre; and records of when the next of kin and a lawyer were contacted and visited the detainee. It also lacks a provision requiring accurate

[4] See the recommendations contained in chap. III, on the right to personal liberty, of the report on the human rights situation in Mexico of the Inter-American Commission on Human Rights. Available from www.cidh.org/countryrep/mexico98sp/Capitulo-3.htm.

information about the custody and whereabouts of persons, including transfers, available promptly to the detainee, his or her relatives and his or her counsel (Body of Principles, principle 12), as well as registration of information on the circumstances of death of prisoners and the location of their remains (International Convention on Enforced Disappearance, art. 17 (3) (g)). Furthermore, Rule 7 (2), which obliges prison authorities to not receive a person in an institution without a valid commitment order, should be revised. The detainee should be admitted into a lawful place of detention and the person in charge of that institution is responsible for admitting the person concerned and immediately notifying a judge.

44. It is equally important that interrogation rules, instructions, methods and practices be kept under systematic review with a view to preventing cases of torture and other ill-treatment (Convention against Torture, art. 11). The Special Rapporteur recalls that counsel must be present during all interview interrogations, in their entirety. The duration of interrogations and the intervals between interrogations must be recorded (preferably with a video recorder but at least with an audio recorder) and the identity of the officials conducting the interrogation should be registered (Body of Principles, principle 23). Individuals arrested legally should not be held in facilities under the control of their interrogators or investigators for more time than is required by law to obtain a judicial warrant of pretrial detention, which, in any case, should not exceed a period of 48 hours. They should be transferred to a pretrial facility under a different authority at once, after which no further unsupervised contact with the interrogators or investigators should be permitted (see E/CN.4/2003/68, para. 26 (g)).

Conditions of detention

45. The Special Rapporteur has noted that inappropriate conditions of detention, including conditions characterized by structural deprivation and the non-fulfilment of rights necessary for a humane and dignified existence, amount to a systematic practice of inhuman or degrading treatment or punishment (E/CN.4/2004/56, para. 41, and A/HRC/13/39/Add.5, para. 230). A considerable amount of jurisprudence at the international and regional levels has also consistently found that conditions of detention can amount to inhuman and degrading treatment. Overcrowding, lack of ventilation, poor sanitary conditions, prolonged isolation, the holding of suspects incommunicado, frequent transfers from one prison to another, the non-separation of different categories of prisoners, the holding of persons with disabilities in environments that include areas inaccessible to them and the holding of persons without means of communication could constitute or lead to cruel, inhuman or degrading treatment or torture. The Rules could benefit from adhering to the requirement established by the Committee on Economic, Social and Cultural Rights regarding services in places of detention (see general comment No. 19 of the Committee, especially paras. 1, 9, 31 and 46).

46. While recognizing that penitentiary systems are almost universally severely underfunded and suffer from decades of accumulated problems, the Special Rapporteur recalls that a lack of financial resources cannot be an excuse for not refurbishing detention facilities, purchasing basic supplies and providing food[5] and medical treatment, among other things. The Rules should stress that treating all

[5] In some countries, e.g. Canada and the Dominican Republic, prison staff are served the same food given to persons deprived of liberty.

persons deprived of liberty with respect for their dignity is a fundamental and universal rule, the application of which cannot be dependent on resources.

Prisoners' safety and prison violence

47. Incidents of abuse among prisoners, from subtle forms of harassment to intimidation and serious physical and sexual attacks, are a regular occurrence in all prisons.[6] The Special Rapporteur observes that although Rule 28 (1) prohibits employing prisoners in a disciplinary capacity, in some States guards delegate the authority for maintaining discipline and protecting detainees from exploitation and violence to privileged detainees who, in turn, often use this power to their own benefit. In this context, special consideration should be given to the aggravated risk of violence that women and those from vulnerable groups, including persons with disabilities, people living with HIV/AIDS, drug-dependant individuals, lesbian, gay, bisexual, transgender and intersex persons and sex workers might suffer.

48. The Special Rapporteur recalls that inter-prisoner violence may amount to torture or other ill-treatment if the State fails to act with due diligence to prevent it (A/HRC/13/39/Add.3, para. 28). As stated by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the State assumes a heightened duty of protection by severely limiting an inmates' freedom of movement and capacity for self-defence (A/61/311, para. 51). Despite the unambiguous wording of the Convention against Torture, there is a lack of awareness of the obligation of prison administration to intervene in inter-prisoner violence. The Special Rapporteur on torture notes that acquiescence in inter-prisoner violence is not simply a breach of professional responsibilities but that it amounts to consent or acquiescence to torture or other ill-treatment.

49. The fundamental role of authorities to exercise effective control over places of deprivation of liberty and ensure the personal safety of prisoners from physical, sexual or emotional abuse should be further strengthened as one of the most important obligations (see the United Nations Standard Minimum Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, para. 9, and the European Prison Rules, rule 52.2). In this respect, preventive measures include increasing the number of personnel sufficiently trained in using non-violent means of resolving conflicts (see CAT/C/BGR/CO/4-5, para. 23 (c), and A/HRC/7/3/Add.3, para. 90 (t)); promptly and efficiently investigating all reports of inter-prisoner violence and prosecuting and punishing those responsible; and offering protective custody to vulnerable individuals without marginalizing them from the prison population more than is required for their protection. Given the intrusive nature of internal surveillance devices as a control and early warning mechanism, such devices should be administered by specialized security personnel trained to strike a balance between exercising security functions and treating persons with respect for their dignity, including by demonstrating respect for and being sensitive to cultural and religious diversity.

[6] Eleventh general report on the activities of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (2001)16, para. 27).

Medical and health services

50. The State must provide adequate medical care, which is a minimum and indispensable material requirement for ensuring the humane treatment of persons in its custody. The carrying out of a prompt, independent and consensual medical examination upon a person's admission to a place of detention and after every transfer between facilities, and thereafter on a routine basis, constitutes one of the basic safeguards against ill-treatment (see Human Rights Council resolution 10/24, paras. 4 and 9, and A/52/40 (vol. I), para. 109). Among the main challenges in the provision of medical care are the lack of appropriate and sufficient medical personnel; inadequate medicine supplies and equipment; and a lack of capacity and delays in authorizing transfers to hospitals. The Special Rapporteur notes that loss of life or a deterioration in an inmate's well-being occurs because of a lack of or unreasonable delays in the provision of urgent medical care, and that these omissions on the part of the authorities can amount to ill-treatment and even torture.

51. The revision of the Rules offers a good opportunity to insist on the obligation of authorities to ensure free, fair and transparent access to a facility's medical services by providing a sufficient number of qualified, independent physicians in all facilities. The Rules should insist on the obligation to guarantee the availability of prompt, impartial, adequate and consensual medical and psychological examination upon the admission of each detainee. Medical examinations should also be provided when an inmate is taken out of the place of detention for any investigative activity, upon transfer or release and in response to allegations or suspicion of torture or other ill-treatment. Likewise, medical examinations must take place if a victim makes a complaint or upon his or her lawyer's motion, subject to judicial review in the event of delay or refusal. It is essential that medical examinations be conducted in a setting that is free of any surveillance and in full confidentiality, except for when the presence of prison staff is requested by the medical personnel. Health personnel must be free from any interference, pressure, intimidation or orders from detention authorities.

52. Medical examinations are a crucial tool in corroborating or refuting allegations of physical and psychological mistreatment. They are also integral to prevention efforts. While forensic science has made progress, the impact of medical examinations is undermined by a lack of rigorous implementation, inadequate funding, insufficient training and institutional dependencies. In many cases, health care is provided by physicians who have an almost exclusively therapeutic role or by nurses or paramedics with only basic medical training, as their focus is on curing sick detainees and examining new arrivals for contagious diseases or obvious wounds. They often lack the required expertise to properly document ill-treatment. Furthermore, reporting signs of torture raises challenges regarding perceived loyalty conflicts (to the prison administration and to the prisoner) and the responsibility to assure the safety of prisoners. In turn, persons deprived of liberty are invariably caught between a legal requirement to provide evidence to support allegations of torture or other ill-treatment and the lack of practical possibilities to produce such evidence. Records of medical examinations upon arrest or transfer often do not exist and recourse to forensic expertise is at the discretion of the supervising authority, who has ample opportunity to delay authorization until the signs of torture have disappeared.

53. The revision of the Rules offers an excellent opportunity to address these deficiencies. The Rules must include a provision obliging authorities to ensure that

medical examinations are not conducted in a superficial manner and to act diligently so as to ascertain the condition of the person examined, allowing that person to freely communicate with the physician (see CAT/OP/MEX/1, paras. 132, 133, 135, 172 and 173). Medical examinations should be thorough enough to detect any psychological consequences of torture or propensity to commit suicide. Furthermore, Rule 24 should insist on the obligation of medical personnel to detect, treat, properly document and refer to the authority responsible for investigating allegations of torture or other ill-treatment any signs of torture or other ill-treatment or any case where there are allegations or reasonable grounds to believe that torture or other ill-treatment may have occurred prior to admission or while in detention (see the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, annex, paras. 6 (a) and (c)).

54. Furthermore, the Rules should be reformulated to integrate principles of clinical independence and medical ethics, as well as principles of equality and non-discrimination: the requirement to respect the autonomy of patients, the need for the informed consent of the person concerned (Convention on the Rights of Persons with Disabilities, art. 25 (d)) and confidentiality, including with regard to HIV testing, the reproductive health of inmates and their medical files (see the United Nations Rules for the Treatment of Women Prisoners, rule 8).[7] In addition, the Rules should include an express recognition that persons deprived of liberty must always have access to adequate health care, including adequate medical, psychiatric and dental care and medication. Persons deprived of liberty should have access to a level of health care that is equivalent to that available to the general population. Currently, Rule 22 (1) already stipulates that prison health services should be organized in close cooperation with the general health administration of the community or nation, and the World Health Organization (WHO) has stated that prison health policies must be integrated into national health policies.[8] To achieve this, prison health-care services should be integrated under the ministry of health.

55. The Rules should adopt special measures to address the particular health needs of persons deprived of liberty belonging to vulnerable or high-risk groups (see para. 47 above). The Rules should allow the prison administration to facilitate the compassionate release of terminally ill persons on the ground of their health status.

56. Finally, the Special Rapporteur emphasizes that health professionals must not, under any circumstance, consent or acquiesce to torture or other ill-treatment, let alone take active part in any such ill-treatment (Principles of Medical Ethics, principles 2 and 3, and the Ethical Principles for Medical Research Involving Human Subjects). Such prohibition extends to such practices as examining detainees to determine their "fitness for interrogation", as well as to providing medical treatment to ill-treated detainees so as to enable them to withstand further abuse (E/CN.4/2003/68, para. 26 (n)). It is important that the Rules exclude the involvement and role of health-care personnel in any disciplinary or security-related measures (Rule 32 (1)). Medical personnel shall, nonetheless, closely monitor the mental and physical health of inmates undergoing punishment and visit them as deemed medically necessary or upon the request of the person deprived of liberty.

[7] World Health Organization (WHO), "WHO guidelines on HIV infection and AIDS in prisons" (Geneva, 1993).

[8] WHO, *Health in Prisons: A WHO Guide to the Essentials in Prison Health* (2007). Available from www.euro.who.int/__data/assets/pdf_file/0009/99018/E90174.pdf.

Disciplinary action and punishment

57. The Special Rapporteur observes that the Rules lack provisions and guidance on how discipline and order should be maintained in order to strike a balance between maintaining security and respecting human dignity. In this context, it is essential that the Rules provide for an obligation for prison authorities to use disciplinary measures on an exceptional basis and only when the use of mediation and other dissuasive methods to resolve disputes proves to be inadequate to maintain proper order. It is also important that punishment always be proportional to the offence for which it is established; doing otherwise would be tantamount to improperly making the nature of the deprivation of liberty harsher. Any act that may amount to a crime should be dealt with by the authorities of justice administration and not by penitentiary or prison staff. All punishments shall be duly recorded.

58. Thus, in Rule 33 it should be made explicit that the use of force and instruments of restraint (including the use of non-lethal or incapacitating weapons) should be a last resort that may be used only in exceptional circumstances, when strictly necessary as specified by law and in a manner that complies with the principle of proportionality and for the shortest possible time (see the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principles 4, 9 and 16). Rule 33 (b), which currently permits the use of restraints (including sedatives, neuroleptics or other drugs) on medical grounds, should be abolished. The Special Rapporteur has previously declared that there can be no therapeutic justification for the prolonged use of restraints and that such use may constitute ill-treatment (see A/63/175, paras. 40, 47 and 48, and A/HRC/22/53, para. 63). The use of physical restraints that are inherently inhuman, degrading or painful (such as electro-shock stun belts and restraint chairs) has humiliating and degrading effects and has been condemned and prohibited by both the Special Rapporteur and the Committee against Torture as methods of restraining those in custody (see A/55/44, para. 180 (c)). The Special Rapporteur is of the view that Rule 31 should be revised to incorporate a prohibition on punishment by suspension or restriction of water or food, as it violates international standards set out in the report of WHO on the social determinants of health and the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas of the Inter-American Commission on Human Rights (principle XI).

Lack of provisions governing searches

59. The Special Rapporteur has received numerous allegations about searches performed arbitrarily in places of deprivation of liberty with a view to punish or humiliate inmates or destroy their belongings. In this respect, the Rules must integrate principles governing searches that meet the criteria of necessity, reasonableness and proportionality (see Human Rights Committee general comment No. 16, para. 8). The Rules should place an obligation on prison authorities to ensure that searches are conducted in private by trained personnel of the same sex as the inmate, that alternate screening methods, such as scans, are developed to replace strip searches and body cavity searches and that searches are conducted by suitably trained personnel, including, where appropriate, health professionals from outside the detention facility, following authorization from the competent authorities (see the United Nations Rules for the Treatment of Women Prisoners, rule 20, and the World Medical Association Statement on Body Searches of Prisoners (1993, as revised in 2005)).

Solitary confinement

60. Prison regimes of solitary confinement often cause mental and physical suffering or humiliation that amounts to cruel, inhuman or degrading treatment or punishment. If used intentionally for purposes such as punishment, intimidation, coercion or obtaining information or a confession, or for any reason based on discrimination, and if the resulting pain or suffering are severe, solitary confinement even amounts to torture (A/66/268, paras. 76, 87 and 88). Solitary confinement should be imposed, if at all, in very exceptional circumstances, as a last resort, for as short a time as possible and with established safeguards in place after obtaining the authorization of the competent authority subject to independent review.

61. The Rules should prohibit the use and imposition of indefinite solitary confinement either as part of a judicially imposed sentence or a disciplinary measure, and alternative disciplinary sanctions should be introduced to avoid the use of solitary confinement. The Rules should also prohibit prolonged solitary confinement and frequently renewed measures that amount to prolonged solitary confinement. The Rules should establish a maximum term of days beyond which solitary confinement is considered prolonged. The Rules should explicitly prohibit the imposition of solitary confinement of any duration for juveniles, persons with psychosocial disabilities or other disabilities or health conditions, pregnant women, women with infants and breastfeeding mothers (see the United Nations Rules for the Treatment of Women Prisoners, rule 22, and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, rule 67). No prisoner, including those serving life sentence and prisoners on death row, shall be held in solitary confinement merely because of the gravity of the crime.

Investigation of all deaths in custody, as well as any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners

62. The State bears the burden of evidentiary proof to rebut the presumption that the State is responsible for violations of the right to life and for inhumane treatment committed against persons in its custody. Accordingly, the obligation on the authorities to account for the treatment of an individual in custody is particularly stringent where that individual dies (A/61/311, para. 54).[9] In this respect, the lack of a prompt, thorough and impartial investigation into allegations of torture and other ill-treatment or death in custody remains one of the major challenges in fighting impunity for such acts.

63. The decision on whether to conduct an investigation is not discretionary, but rather an obligation irrespective of whether a complaint is filed or not. The decision by the Committee against Torture in the well-known case *Blanco Abad v. Spain*, wherein a relatively short delay was held to constitute a violation of article 12 of the Convention against Torture, confirms the interpretation that a prompt investigation, in order to be effective, must be initiated within hours or, at the most, within days.[10]

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[9] Inter-American Commission on Human Rights, *Report on the Human Rights of Persons Deprived of Liberty in the Americas* (2011). Available from www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf.

[10] *Blanco Abad v. Spain*, Comm. No. 59/1996, para. 8.5. See also: Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, 2nd ed. (Kehl am Rhein, N. P. Engel Verlag, 2005), p. 434.

64. Although article 12 of the Convention against Torture does not exclude the possibility of the investigation being carried out by prison administration, in most cases internal investigations lack transparency and are marred by a conflict of interest. Allegations of torture and other ill-treatment should be investigated by an external investigative body, independent from those implicated in the allegation and with no institutional or hierarchical connection between the investigators and the alleged perpetrators.[11]

65. It is important that the Rules provide detailed guidance on the purpose, modalities and overall parameters of effective investigations and documentation of torture and other ill-treatment, as reflected in the Principles on Effective Investigation and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. More specifically, Rule 44 should, at a minimum, require the administration to ensure that, notwithstanding internal investigations, all complaints or reports of torture or other ill-treatment, including prison violence, threats and intimidation, as well as incidents of deaths in custody (irrespective of their cause) or shortly following release, are transmitted without screening to an external independent body for investigation. In the event that the investigation confirms allegations of torture or other ill-treatment, the victims should be guaranteed both rehabilitation and redress (see general comment No. 3 of the Committee against Torture). There should be protocols and guidelines for the prison administration about cooperating with the authorities by not obstructing the investigation and by collecting and preserving evidence. Even in the absence of an express complaint (including in the case of withdrawal of a complaint, provided that the security of the complainant is guaranteed), an investigation shall be undertaken if there are other indications that torture or other ill-treatment might have occurred (see Principles on the Effective Investigation, principle 2). Furthermore, information related to the circumstances surrounding the death of a person in custody should be made publicly accessible, considering that public scrutiny outweighs the right to privacy unless otherwise justified. The prison administration should systematically identify and collect the patterns of deaths for further examination by independent bodies.

66. The Rules should ensure that those potentially implicated in torture or other ill-treatment should immediately and for the duration of the investigation be suspended, at a minimum, from any duty involving access to detainees or prisoners because of the risk that they might undermine or obstruct investigations (see Principles on Effective Investigation, principle 3 (b)). Serious consideration should also be given to the creation of witness protection programmes that fully cover persons with a previous criminal record and staff (see E/CN.4/2004/56, para. 40).

Protection and special needs of vulnerable groups deprived of their liberty

67. Ensuring non-discrimination and special protection for vulnerable groups and individuals is a critical component of the obligation to prevent torture and other ill-treatment. The Special Rapporteur recognizes that while all people deprived of their liberty are vulnerable to neglect, abuse and mistreatment, for certain marginalized groups that vulnerability is heightened. These groups include, in addition to those identified in Rule 6 (see para. 28 above), particular categories of detainees or prisoners (e.g. sex workers, drug users, lesbian, gay, bisexual, transgender and intersex persons, prisoners who have tuberculosis or terminal

[11] *Jordan v. United Kingdom*, application No. 24746/94, para. 106.

illnesses and people living with HIV/AIDS) (see A/HRC/13/39/Add.5, paras. 231 and 257).

68. Both the Special Rapporteur and other human rights mechanisms have expressed concern about reports of sexual abuse and physical violence against homosexual and transgender prisoners (see A/HRC/19/41, paras. 34 and 36, and CAT/C/CRI/CO/2, para. 18). The Special Rapporteur has also examined the special needs of drug users in detention and penitentiary centres and the practice of denying opiate substitution treatment as a way of eliciting confessions by inducing painful withdrawal symptoms. This is a particular form of ill-treatment and possibly torture (A/HRC/22/53, para. 73).

69. In a 2008 report that focused on the situation of persons with disabilities in detention, the Special Rapporteur noted that the lack of reasonable accommodation may increase the risk of exposure to neglect, violence, abuse and ill-treatment and that if such discriminatory treatment inflicts severe pain or suffering, it may constitute torture or other form of ill-treatment (see A/63/175, paras. 38 and 53). Reasonable accommodation in the context of prisons and detention centres should be considered a prerequisite for humane treatment.

70. The Special Rapporteur notes that while the Rules recognize and address specific needs of different categories of prisoners (such as women, juveniles, persons with disabilities and foreign nationals), it fails to require the extension of special protection measures to other disadvantaged groups of detainees or prisoners. It is essential that the Rules adopt special measures aimed at protecting the rights of other disadvantaged groups of prisoners, in accordance with well-established international standards and norms (see UNODC/CCPCJ/EG.6/2012/2, p. 21). Special care must be taken to ensure that segregating members of these groups does not further marginalize them from the rest of the community or expose them to further risk of torture or ill-treatment (see, for example, the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, principle 9 (a)).

71. With respect to prisoners who use drugs, and in the context of revising Rule 22 (1), the Rules should provide for an obligation to ensure that all harm-reduction measures, including evidence-based measures for the prevention and treatment of HIV and hepatitis C, needle and syringe exchange programmes and evidence-based substance abuse treatment, are available to people who use drugs at all stages of their detention.

72. Rules 82 and 83 should be replaced with a provision that applies to all persons with disabilities. Such a provision should state explicitly that inmates with disabilities are entitled to be eligible for all programmes and services available to others, including voluntary engagement in activities and community release programmes, and to be housed in the general prison population on an equal basis with others without discrimination. It should also provide a clear articulation of certain rights enshrined in the Convention on the Rights of Persons with Disabilities: the duty to provide reasonable accommodation (arts. 5 and 14); the duty to work towards creating an accessible environment (art. 9); the duty to ensure that persons with disabilities have access to all amenities without having to rely on assistance from fellow inmates (e.g., arts. 5, 20 and 28); the duty to respect the choices of persons with disabilities and to establish effective mechanisms to support decision-making in order to enable

people with psychosocial or intellectual disabilities to exercise their legal capacity on an equal basis with others (see arts. 12 and 13).

Right of access to legal representation

73. Prompt access to legal counsel during the initial stage of detention, if necessary through legal aid, constitutes an essential safeguard against torture and other ill-treatment (see the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, para. 8). The absence of access to legal representation in the immediate aftermath of arrest and during interrogation make the extraction of a confession or other incriminating evidence the most expeditious means of "solving" a case. Regrettably, access to legal counsel during the initial stage of arrest is not often provided. Where it is available, free legal service exists only as a formality and falls short of providing substantial protection (A/HRC/13/39/Add.5, paras. 104 and 106).

74. The Special Rapporteur notes that Rule 93 does not specify that legal counsel should be granted immediately, without delay, upon apprehension.[12] Rule 93 should ensure that all persons detained, arrested or imprisoned, suspected or accused, or convicted (including death row inmates), and at all stages of the criminal justice process, including whenever there is a complaint of torture or other ill-treatment, are provided with prompt, independent and effective legal representation of the detainee's own choosing, if available, and otherwise at the State's expense. Such access must be granted without delay, interception or censorship and in full confidentiality (see the United Nations Principles and Guidelines on Access to Legal Aid, principles 3, 7 and 12, and the Body of Principles, principle 18).

75. Rule 37 should further ensure that all persons deprived of liberty are provided with adequate opportunities, sufficient time and the facilities needed to communicate and consult with legal counsel (see the Basic Principles on the Role of Lawyers, para. 8). Denial of legal representation shall be subject to independent review without delay (see the United Nations Principles and Guidelines on Access to Legal Aid, principle 9). Appropriate means, such as telephones, should be made available in all places of deprivation of liberty. Special measures should be taken to ensure meaningful access to legal representation and assistance for persons belonging to groups with particular needs and heightened vulnerability to ill-treatment (principle 10).

Complaints and independent oversight

76. During country visits, the Special Rapporteur has often criticized the lack of internal complaints bodies sufficiently detached from the authority alleged to have perpetrated the ill-treatment to be deemed impartial. In many States, these mechanisms lack independence and effectiveness. Complaints submitted by detainees are often dismissed as fabricated for the purpose of evading justice or as lacking credibility.

77. The Special Rapporteur recalls that the perceived fairness of a complaints system is indeed fundamental to its effectiveness in combating impunity and

[12] One practical measure that could be taken is the installation of prosecutors' and public defenders' offices in the immediate vicinity of police stations.

promoting a safe custodial environment.[13] Sufficient safeguards and opportunities must be in place to make a complaint and to ensure the independence, reliability, confidentiality and safety of complaint mechanisms (see, for example, the United Nations Rules for the Treatment of Women Prisoners, rule 25 (1)). Moreover, the right of detainees to file a complaint implies facilitating simple, prompt and effective recourse before competent, independent and impartial authorities against acts or omissions. Appropriate systems must be established to handle and process these complaints, ensuring access to independent lawyers and timely independent medical examination and guaranteeing the safety and security of the complainant. The Rules should place an obligation on prison authorities to take effective measures to protect complainants against any form of intimidation, reprisals and other adverse consequences. Measures in this regard include the transfer of the complainant or the implicated personnel to a different detention facility or the suspension from duty of the personnel. It is also important that the Rules integrate a provision obliging the personnel to guarantee the timely enforcement of any decision granting the remedy.

78. The overwhelming majority of complaints call for improvements in the conditions of detention and the provision of basic services or other measures that require minimal funding. They could be addressed by delegating independent, dedicated persons to receive and handle minor complaints and ensure that steps are taken within a reasonable period of time to set aside funds required to give effect to these rights.

79. Furthermore, because of disability or literacy problems, many detainees or prisoners are disadvantaged and unable to adequately fill out complaint forms. As stated by the European Court of Human Rights in *Ciorap v. Moldova*, the onus is on the State to ensure that prisoners' rights and obligations are communicated effectively to them.[14] Rule 35 should provide for the obligation to make such information available in both written and oral form, in Braille and easy-to-read formats, and in sign languages for deaf or hard-of-hearing individuals, and to display it prominently in all places of deprivation of liberty.

80. The Rules should provide for a simple and accessible mechanism for filing complaints (e.g. through the installation of telephone hotlines or confidential complaint boxes) by persons deprived of their liberty or third parties acting on their behalf (Body of Principles, principle 33 (1) and (2)). Such a mechanism should facilitate the filing of complaints, without delay or censorship, to the administration of the place of detention or penitentiary institution and to judicial authorities and other independent national authorities with investigatory and/or prosecutorial powers. The threshold for a complaint must be as low as possible, in particular in the context of detention. In this respect, the Committee against Torture has established that a formal submission or express statement of the complainant is not required and that an allegation brought in a non-bureaucratic manner, either verbally or in writing, to the attention of a State official suffices.[15] If the initial request or complaint is rejected or a response to it is unduly delayed, it should be possible to file a complaint with a judicial or other authority (Body of Principles, principle 33 (4)).

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[13] Ireland, Office of the Inspector of Prisons, *Guidance on Best Practice relating to Prisoners' Complaints and Prison Discipline* (2010), para. 3.11.

[14] *Ciorap v. Moldova*, application No. 12066/02 (2007).

[15] *Parot v. Spain*, Comm. No. 6/1990, para. 10.4.

Independent oversight

81. Regular inspection of places of detention constitutes one of the most effective preventive measures against torture. In this respect, the Special Rapporteur has stressed the importance of the universal ratification of the Optional Protocol to the Convention against Torture and the establishment of independent and professional national preventive mechanisms (see, for example, the guidelines on national preventive mechanisms (CAT/OP/12/5)).

82. The revision of Rule 55 creates an excellent opportunity to integrate the well-established, two-fold system of independent monitoring of places of detention that allows for inspections to be carried out by governmental agencies and other competent authorities distinct from those directly in charge of the administration of the place of detention or imprisonment (see the Optional Protocol, arts. 5.6, 17 and 35, and the Body of Principles, principle 29). The revised Rule 55 should make clear that the aforementioned inspection powers, as understood in the two-fold system, require judicial control to be in place. In this respect, the Rules should provide for the power of independent oversight mechanisms to have unimpeded access (on a regular and an ad hoc basis), without prior notice, to all places of deprivation of liberty, including police lock-ups, vehicles, prisons, pretrial detention facilities, security service premises, administrative detention areas, psychiatric hospitals and special detention facilities. They should be entitled to inquire and access information and documentation, including registries, and have private, unsupervised and confidential interviews with detainees of their own choosing.[16] Finally, the monitoring bodies should be able to make their findings public and follow up on the outcome (United Nations Rules for the Protection of Juveniles Deprived of their Liberty, rule 74).

Training relevant staff to implement the Rules

83. The Rules should ensure that education and information regarding the prohibition against torture or other ill-treatment are included in the training of corrections personnel, whether civilian or military, medical personnel and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. Medical personnel should receive specific training on the provisions contained in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2000). Training programmes should be envisaged to sensitize personnel to permissible methods and limitations for searches and steps to prevent and remedy prison violence with techniques that do not give rise to excessive use of force. Efforts should be strengthened to ensure that personnel adopt a gender-sensitive and age-sensitive approach (see the United Nations Rules for the Treatment of Women Prisoners) and are sensitive to the particular needs of inmates who belong to marginalized groups by, for example, providing guidance, instances and examples on principles of equality and

[16] See the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, principle 7; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, rule 72; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 29 (2); the Optional Protocol to the Convention against Torture, arts. 14 (d) and 20 (d); and the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, principle XXIV.

non-discrimination, including in relation to sexual orientation and gender identity (see A/HRC/19/41, para. 75).

84. Provisions on the suitability, training and working conditions of qualified civilian personnel independent of police, military and criminal investigation services should be strengthened in the Rules. Authorities should take steps to designate a civilian body to conduct training programmes.

IV. Conclusions and recommendations

85. **Over the past few decades, there has been a significant increase in the worldwide prison population, placing an enormous financial burden on States. It is estimated that there are over 10 million prisoners in the world, and prison populations are growing on all five continents.[17] Imprisonment has become an almost automatic response rather than a last resort, as mirrored in increasing and disproportionate penalization, excessive use of pretrial detention, increased length of prison sentences and little use of non-custodial alternatives (see General Assembly resolution 45/110, annex). Furthermore, the penitentiary system in most countries is no longer aimed at the reformation and social rehabilitation of convicts but simply aims to punish by locking offenders away. Non-compliance with international standards in relation to conditions of detention is caused by resource constraints and by the punitive approach of most criminal justice systems. Corruption too clearly plays a negative role (see A/64/215 and Corr.1, para. 80).**

86. **The global prison crisis has an adverse impact on conditions of detention. The negative impact of the overuse of incarceration on human rights is manifold. The overuse of imprisonment constitutes one of the major underlying causes of overcrowding, which results in conditions that amount to ill-treatment or even torture. The revision of the Rules offers an excellent opportunity to revisit States' commitment to addressing the needs of persons deprived of liberty, with full respect for their inherent dignity and fundamental rights, and to adhering strictly to international human rights instruments.**

Recommendations

87. **The Special Rapporteur reiterates the importance of the principle that, except for those lawful limitations that are demonstrably necessitated by the fact of incarceration, persons deprived of their liberty shall retain their non-derogable human rights and all other fundamental freedoms (General Assembly resolution 67/166).**

88. **The Special Rapporteur calls upon all States to:**

(a) Apply the set of procedural standards and safeguards mentioned in the present report, at a minimum, to all cases of deprivation of liberty, as a matter of law and policy;

[17] International Centre for Prison Studies, *World Prison Population List*, 9th ed. (latest available information as at early May 2011).

(b) Renew their commitment to humane conditions in any place of deprivation of liberty and implement the minimum standards contained in the Rules on a global level;

(c) Keep abreast of recent developments in international norms and standards and adopt, at a bare minimum, legislation and practices that are compliant with the Rules;

(d) Spare no effort to ensure the full and effective implementation of all fundamental principles contained in international treaties, regional and international jurisprudence and instruments informed by up-to-date guidelines and standards such as the Rules;

(e) Endeavour to reduce pretrial detention and undertake comprehensive justice reforms with a view to enhance the use of alternatives to pretrial detention and custodial sentences;

(f) Declare unambiguously that treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule, the application of which, at a minimum, cannot be dependent on the material resources available in the State party;

(g) Address and prevent detention conditions, treatment and punishment of persons deprived of their liberty that amount to cruel, inhuman or degrading treatment or punishment;

(h) Allocate adequate resources, including properly trained staff, to ensure the full implementation of those standards;

(i) Make use of technical assistance offered by relevant United Nations entities and the international community to strengthen national capacities and infrastructure in the field of standard minimum rules for treatment of persons deprived of liberty;

(j) Actively engage with the open-ended intergoveramental Expert Group on the Standard Minimum Rules for the Treatment of Prisoners established by the Commission on Crime Prevention and Criminal Justice, to exchange information on good practices and challenges with a view to ensuring that the revised Rules reflect the recent advances in correctional science and best practices and to implement the Rules at the national level.

89. The Special Rapporteur calls upon the open-ended intergovernmental Expert Group to:

(a) Consider the suggestions made in the present report in the deliberations ahead and in proposed revisions to the Rules;

(b) Provide financial means to further support the revision process;

(c) Continue to welcome and ensure active participation in the review process by specialized civil society organizations.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Cultural rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, submitted in accordance with Human Rights Council resolutions 19/6 and 23/10.

* A/68/150.

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Report of the Special Rapporteur in the field of cultural rights

Summary

In the present report, the Special Rapporteur considers the issue of the writing and teaching of history, with a particular focus on history textbooks. The importance of historical narratives as cultural heritage and collective identity has been evident in all country visits undertaken by the Special Rapporteur, with people striving to retrieve, validate, make known and have acknowledged by others their own history on the one hand and contesting interpretations on the other. Other aspects relating to history have also been stressed, including that of certain groups being excluded from or portrayed negatively in history teaching. The Special Rapporteur therefore seeks to identify the circumstances under which the official historical narrative promoted by the State in schools becomes problematic from the perspective of human rights and peace, in addition to proposing a set of recommendations to ensure a multiperspective approach in history teaching.

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I. Introduction

1. The present report is the first of two consecutive studies by the Special Rapporteur on historical and memorial narratives in divided and post-conflict societies being submitted to the General Assembly in 2013 and the Human Rights Council in 2014. The present report pertains to the writing and teaching of history, with a particular focus on history textbooks. In the second report, the Special Rapporteur will focus on memorials and museums.

2. Most, if not all, societies today face challenges in terms of the writing and teaching of history, in particular those that have seen international or internal conflicts in the recent or less recent past; post-colonial societies; societies that have experienced slavery; and societies challenged by divisions based on ethnic, national or linguistic background, religion, belief or political ideology. The ability of people, in various contexts, to have access to and have acknowledged their own cultural heritage, and that of others, in terms of historical narratives, to have access to information and education and to develop critical thinking and an understanding of the realities and perspectives of others is at stake.

3. Throughout her country visits, the Special Rapporteur has noted the paramount importance of history writing and teaching for people's identities, sense of belonging and relationships with societal others and the State. Taking an approach to history writing and teaching that is based on human rights invites further thinking about the objectives of education in general and of history teaching in particular. It also calls for more debates, in the context of nation-building, on ways to articulate policies aimed at peace, fostering mutual understanding between people and communities and providing the spaces necessary for various communities to present their perspectives on their own history, which they consider to be an integral part of their identity and cultural heritage.

4. Nation-building and community-building processes use narratives that usually interweave stories, myths and legends with history. Becoming a part of the community's cultural heritage, such narratives enable the transmission to younger generations of cultural references on which community members build their cultural identity. In the present report, the Special Rapporteur tackles a different, albeit related, issue: the way in which history, understood as a discipline, is taught in schools. She seeks to identify under which circumstances the historical narrative promoted by the State in schools becomes problematic from a human rights perspective.

5. The Special Rapporteur's two studies on historical and memorial narratives suggest that there is a need for further reflection on the possible interaction between the teaching of history and the wider processes of collective memorialization. History is an academic discipline based on rigorous and systematic research of historical sources using confirmed methods and providing ascertainable results. History is only one of several elements influencing collective memory, which, in addition to information provided within kinship and community circles, draws upon numerous sources, such as literature, the media, entertainment industries, cultural landscapes, official holidays and memory extracts from the past that recall certain events, actions or persons from a particular perspective and without necessarily recalling the wider context. Memory constructs a specific vision of a collective self and attendant value system. Memorialization processes are emotional by definition,

while the aim of history teaching should be critical thinking. As stressed by Pierre Nora, the discipline of history should not celebrate the past as memory does, but study the ways in which the past is celebrated. The writing and teaching of history should help to uncover the selective and self-serving nature of memory. In recounting the relationship with the past, it should highlight prejudice and stereotypes embedded in collective memory.

6. The conclusion and recommendations presented herein are based on an acknowledgment that history is always subject to differing interpretations. While events may be proven, including in a court of law, historical narratives are viewpoints that, by definition, are partial. Accordingly, even when the facts are undisputed, conflicting parties may nevertheless fiercely debate moral legitimacy and the idea of who was right and who was wrong. Provided that historical narratives rigorously follow the highest deontological standards, they should be respected and included in the debate.

7. The past constantly informs the present. History is continuously interpreted to fulfil contemporary objectives by a multiplicity of actors. The challenge is to distinguish the legitimate continuous reinterpretation of the past from manipulations of history for political ends. The Special Rapporteur's recommendations are therefore based on the principle that history teaching should promote critical thinking and adopt a multiperspective approach, taking into account the right to freedom of opinion and expression, the right to information and education, academic freedoms and the rights of individuals and groups to have access to their cultural heritage and that of others.

8. A consultation on these issues was organized from 1 to 3 July 2013 by the Northern Ireland Human Rights Commission, in association with the University of Ulster and in cooperation with the Special Rapporteur, in Londonderry, United Kingdom of Great Britain and Northern Ireland. The consultation included a public symposium and a two-day experts' meeting (see annex). On 5 July, the Special Rapporteur convened open consultations in Geneva in order to offer an opportunity to States, national human rights institutions and non-governmental organizations to present their views. The Special Rapporteur is grateful to all those who contributed and extends her special thanks to the Northern Ireland Human Rights Commission for its support.

II. Normative framework

A. Relevant human rights provisions

9. Numerous human rights provisions provide guidance in the area of history writing and teaching.

10. The Special Rapporteur considers the issue from the perspective of the right of all persons to have access to cultural heritage, based in particular on article 15 (1) (a) of the International Covenant on Economic, Social and Cultural Rights (see also A/HRC/17/38).

11. Relevant provisions also include the right of all persons to education, as enshrined in article 13 of the International Covenant on Economic, Social and Cultural Rights and articles 28 and 29 of the Convention on the Rights of the Child,

and the right to disseminate and have access to information and knowledge, based on the right to freedom of expression, as set out in article 19 of the International Covenant on Civil and Political Rights, which encompasses the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers. Access to scientific knowledge and information is another key dimension of the right of all persons to enjoy the benefits of scientific progress, as stipulated in article 15 (1) (b) of the Covenant (see also A/HRC/20/26, paras. 26-28).

12. Several provisions call for the incorporation into educational programmes the histories of indigenous peoples (art. 15 (1) of the United Declaration on the Rights of Indigenous Peoples) and of minorities (art. 4 (4) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities) (see also general comment No. 21 of the Committee on Economic, Social and Cultural Rights, paras. 27 and 54 (c), and general comment No. 11 of the Committee on the Rights of the Child, para. 58).

13. The repeated call by human rights bodies to eradicate stereotypes and racial and gender prejudices from textbooks is pertinent here. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance recommended that States should encourage an accurate reflection of history in education so as to avoid stereotypes and distortion or falsification of historical facts, which could lead to racism, racial discrimination, xenophobia and related intolerance, and that textbooks and other educational materials should reflect accurately historical facts as they related to past tragedies and atrocities (see A/HRC/23/56, para. 57 (f)).

14. The Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1974, is particularly relevant. It recommends that a global approach should be the framework for presenting local and national aspects of different subjects and serve to illustrate the scientific and cultural history of humankind. States should, pursuant to its paragraphs 38 (c) and 45, encourage wider exchanges of textbooks, especially history and geography textbooks, and, where appropriate and possible, undertake bilateral and multilateral agreements for reciprocal studies and revisions of textbooks and other educational materials to ensure that they are accurate, balanced, up to date, unprejudiced and enhance mutual knowledge and understanding between different peoples.

B. Relevant regional instruments and documents

15. The Council of Europe has developed relevant tools and instruments. Article 2 of the European Cultural Convention of 1954 stipulates that Contracting Parties are to encourage the study of history and civilization in one another's territories. Recommendation 1283 (1996) on history and the learning of history in Europe proposes supporting independent national associations of history teachers and historical research, including the work of multilateral and bilateral commissions on contemporary history, the development of codes of practice for history teaching, academic freedoms and cooperation between historians.

16. Importantly, Recommendation Rec(2001)15 of the Committee of Ministers on history teaching in twenty-first-century Europe stresses that history teaching must

not be an instrument of ideological manipulation, of propaganda or used for the promotion of intolerant and ultranationalistic, xenophobic, racist or anti-Semitic ideas. It states that historical research and history taught in schools cannot be compatible with the fundamental values and statutes of the Council of Europe if it promotes or allows misuses of history, through falsification or creation of false evidence, doctored statistics, faked images, etc.; fixation on one event to justify or conceal another; distortion of the past for the purposes of propaganda; an excessively nationalistic version of the past which may create the "us" and "them" dichotomy; abuse of historical records; and denial or omission of historical facts. It is further noted that history teaching should, among other things, occupy a vital place in the developing of respect for all kinds of differences; be a decisive factor in reconciliation, recognition, understanding and mutual trust between peoples; and play a vital role in the promotion of fundamental values, such as tolerance, mutual understanding, human rights and democracy. Furthermore, it should develop pupils' intellectual ability to analyse and interpret information critically and responsibly, through dialogue, through the search for historical evidence and through open debate based on a multiperspective approach, especially on controversial and sensitive issues; and be an instrument for the prevention of crimes against humanity. Lastly, Recommendation CM/Rec(2011)6 of the Committee on Ministers on intercultural dialogue and the image of the other in history teaching offers an important additional tool in devising practical methods of history teaching in the context of intercultural dialogue and post-conflict situations.

17. The Cultural Charter for Africa of 1976 contains relevant provisions. In the preamble, it is recalled that cultural domination led to the depersonalization of part of the African peoples and falsified their history and that it is imperative to carry out a systematic inventory of cultural heritage, in particular in the spheres of traditions, history and arts. The aims of the Cultural Charter include the rehabilitation, restoration, preservation and promotion of African cultural heritage and the encouragement of international cultural cooperation for a better understanding among peoples (art. 1). In addition, African States are called upon to take steps to ensure that the archives removed from Africa are returned to African Governments so that they may have complete archives concerning the history of their countries (art. 29).

18. While other regional instruments may not specifically address the issue of history teaching, it is worth noting that the Convention for the Promotion of Inter-American Cultural Relations of 1954 is based on the idea, expressed in the preamble, that the exchange of professors, teachers and students among the American countries will contribute to greater knowledge and mutual understanding of their peoples.

III. Government control and consequences for peace and human rights

19. In all countries, history teaching is adjusted to politics to a certain extent. Historical narratives are commonly used to build nations, shape communities and foster national or regional identities beyond differences of religion, language and ethnicity. They also serve to legitimize a particular political authority and its political concepts and ensure loyalty to the State. The logic of nation States itself

propels the projection of a common culture, language and history or, more specifically, a desired image of the past, to construct a unique imaginary foundation as the core of the nation.[1]

20. Such processes are usually shaped by the desire to present the past of one's own people or nation as better than it may have been. Darker episodes from the past tend to be omitted, minimized or justified, in particular when they relate to crimes against humanity and genocides, colonization and slavery, wars and civil strife, occupations and conquests, and grave violations of human rights. Policies may sometimes stipulate that a positive outlook is to be adopted in interpreting the past, impeding a critical approach.

21. In the twentieth century, a massive rewriting of history accompanied the emergence of numerous independent States after decolonization and the development, and subsequent abolition, of authoritarian and totalitarian political systems. Today, in a world accustomed to ideological conflicts, historical narratives have become an integral part of the agenda and rhetoric of various political actors at the local, regional and international levels. It is therefore important to ensure that diverse viewpoints are heard, so as to simultaneously combat mechanisms that allow for the manipulation of history.

22. State practices leading to revisionism, meaning intentional, tendentious and politically orchestrated changes of the images of the past impervious to evidence, are of concern. Such practices include fabricating historical facts and highlighting and decontextualizing facts that confirm the desired narrative while omitting those that question it. Revisionism often occurs during or after major political upheavals. Too frequently, the diversity of historical facts and interpretations is replaced by a single interpretation of the past that accords with a particular philosophy or ideology. In many cases, the State's promotion of a single interpretation is reinforced by banning or systematically marginalizing alternative narratives.[2]

23. The reconstruction of human history to fit a particular world view is a phenomenon in all societies. The question is whether, and to what extent, access to resources or historical facts and earlier interpretations is obstructed and whether space is given to articulate differences freely without fear of punishment. Even without deliberate manipulation, history teaching is not exempt from bias and, too often, the diversity of historical narratives is insufficiently acknowledged. Democratic and liberal societies too must question their existing paradigms from the perspective of ensuring a multi-voice narrative inclusive of, and accessible to, all.

24. Sharp disagreements over the past can fuel contemporary tensions between communities or countries. Specific cases brought to the attention of the Special Rapporteur are numerous and concern regions across the world. They include North-East Asia, where intense conflicts between China, Japan and the Republic of Korea stem from interpretations of the period of Japanese domination before or during the Second World War. Controversies over history writing and teaching are also intense in South Asia, as well as in the Middle East, in particular between Israel and the

[1] See Benedict Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism*, revised ed. (London, Verso, 1991), p. 74.

[2] See Karl R. Popper, *The Open Society and Its Enemies* (London, Routledge, 1945).

State of Palestine.[3] In South-Eastern Europe, dramatic transitional changes have profoundly affected the interpretation of history and history teaching has contributed to, served to justify and even fuelled conflicts. In the European Union, most countries have had conflicts with neighbouring countries either bilaterally or as part of antagonistic blocs, rendering all European history controversial.[4] European countries continue to offer differentiated narratives of the Holocaust,[5] while former Eastern bloc countries face difficulties with their communist past. Examples may also be found in Latin America and in Africa, where the teaching of history remains controversial, including in countries that have undergone a truth and reconciliation process.

25. Often, a specific period of history or event is simply omitted from school teaching. This is especially evident following major upheavals, when a new narrative is promoted, and in societies seeking to achieve reconciliation after wars, internal strife or dictatorships, motivated by a deliberate attempt to conceal data, either to shield key actors from prosecution or to achieve reconciliation, or both. Such an omission can also result from the sheer impossibility of divided societies reaching agreement on how to describe a shared past of conflict, violence and pain.

26. Past conflict is sometimes considered too recent to be addressed and taught in schools. Understanding the past requires distance. It is usually considered that at least one generational period is needed before painful events can be discussed openly. Nevertheless, discussions on recent events are inevitably conducted within society, and younger generations receive historical narratives from various sources, including the Internet. History teaching in schools therefore appears to remain the best option to deal with a recent painful past because it affords an opportunity to exercise critical thinking and expose pupils to various narratives. This, however, calls for robust education of teachers.

27. Following the cessation of armed conflicts (and sometimes even during conflicts), history textbooks may gain a new mission: that of laying the ground for a potential future "payback" for past events. The teaching of history may serve as the continuation of war by other means, given that books continue to construct the image of the enemy, preparing future generations for the continuation of hostilities, with even the most ancient past being readjusted to accommodate the needs of contemporary politics and future conflict.

28. In acute cases following internal conflicts, such policies can be accompanied by a segregated school system in which pupils are taught diverging monochromatic historical narratives. Major political upheavals create deep social turbulence, social confusion and the circulation of unreliable knowledge, weakening the critical thinking of citizens. When different parts of the same society learn divergent historical narratives and have negligible opportunities to interact, this can lead to

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[3] See Sami Adwan, Baniel Bar-Tal and Bruce Wexler, "Victims of our own narratives: portrayal of the 'other' in Israeli and Palestinian school books", February 2013.

[4] See Maitland Stobart, "Fifty years of European cooperation on history textbooks: the role and contribution of the Council of Europe", *Internationale Schulbuchforschung/International Textbook Research*, vol. 21 (1999), pp. 147-161.

[5] See Robert Stradling, *Teaching 20th-Century European History* (Strasbourg, Council of Europe Publishing, 2001); Falk Pingel, *The European Home: Representations of 20th Century Europe in History Textbooks* (Strasbourg, Council of Europe Publishing, 2000); John Slater, *Teaching History in the New Europe* (Cassell, London, 1995).

living in disconnected realities. Such policies tend to have a greater negative impact on the poor, the working class or marginalized sections of society, who are most deprived of opportunities to interact with others and lack access to alternative narratives.

29. The homogenizing of narratives constricts the space for diverse perspectives and debates, foreclosing pupils' ability to see the complex events in their country, region or the world in a more nuanced manner. The lack of a pluralistic multi-voice narrative of history can lead to the creation of so-called "parallel" narratives,[6] i.e. a single official narrative transmitted in schools, which sometimes only a minority believes to be true, and private narratives, gathered from other sources. This disjuncture creates spaces that can be filled by those promising the triumph of justice and real truth upon assuming power.

30. Acute, chronic or intractable conflicts between States are often supported through historical narratives that present the conflicting peoples in terms of enemies and victims or perpetrators of aggression. Iterated images from the past create the illusion that conflict is the natural state in which the concerned people or groups exist, completely obscuring historical cooperation and good relations. When history is presented as an ever-repeating process, with preordained societal relations, textbooks become the bearers of conflict ideology, helping to create an atmosphere in which new conflicts become possible.

31. Distortions of history teaching are not restricted to post-conflict societies. In many societies, history teaching either altogether ignores or carries, validates or strengthens stereotypes about marginalized groups, especially minorities and indigenous peoples, in addition to women and the poor. The dominant homogenizing narrative blanches out diversity, ignoring the cultural heritage of everyone outside the group in power, simultaneously depriving the majority of the opportunity to understand the complexity of their country. Reported cases include history textbooks failing to refer to women and minorities or to acknowledge renowned historical figures and contributions of a specific group, in addition to imported history books in which sections on specific minorities have been deleted during translation into the national language.[7] The histories of migrant populations are also commonly excluded.

32. History teaching of colonization and slavery continues to be problematic.[8] In former colonizing States, history teaching tends not fully to address the atrocities committed during colonization and through slavery, or acknowledge their contemporary legacies. Colonialism deeply influenced European self-understanding, combining a sense of one's own superiority with notions of the colonial other's inferiority. In countries in which a critical stance towards this period is not visible, such as when teachers are required to recognize the positive values of colonialism, it is important to develop competencies such as a multiperspective approach, transnational historical awareness and critical awareness of Eurocentrism. In post-colonial societies, various methods of manipulating history may be deployed: from

[6] See Sami Adwan, Dan Bar-On and Eyal Naveh, eds., *Side by Side: Parallel Histories of Israel/Palestine* (New York, New Press, 2012).

[7] According to the contribution by the Bahá'í International Community to the open consultation, 5 July 2013.

[8] See Alicia C. Decker, "Painful pedagogies: teaching about war and violence in African history", *Perspectives on History*, vol. 48, No. 5 (May 2010).

omitting so-called "dark periods" to a special insistence on them, creating what may be termed a "victim culture" that may be used to excuse non-performance in diverse areas. Manipulations may also be used to avoid addressing past complicities and local oppressions.

33. A specific challenge confronting many post-colonial States was the absence of written histories of their own. In many societies, local histories were oral and shaped outside contemporary academic methodology. Moreover, the pre-eminence accorded to the written word over the oral tradition as "more authentic" undermined the value and traditions of oral history. Consequently, history continued to be taught from the perspective of the colonizers. In many cases, history textbooks had to be developed from scratch, without the benefit of previous research. Consequently, controversial issues and, therefore, entire periods of history were sometimes overlooked.

IV. Researching and writing history and respect for academic freedoms

34. History is subject to government control when authorities are not keen on allowing an independent, critical academic discipline.

35. As an academic discipline, history is based on the study of historical sources, analysis of facts and the synthesis of data into a narrative. The resulting narratives depend on various factors, including the historian's ability and level of competence, but also her or his way of thinking and value system, the general climate of work and political and social circumstances. Historians need to be aware of their positions and the resulting impact on their narrative. Debate among historians, following the deontology of the profession, obliges them to take into account various and conflicting data and to analyse events in the widest possible context.

36. The State may impose a single, politically dictated historical narrative through restrictions affecting the entire process of researching and writing history, including those on freedom of opinion, of speech and of academic freedoms, in particular the freedom to choose a specific research subject, to have access to archives and specific publications, to work with historians from other countries or groups and to publicize syntheses that challenge a prescribed pattern. State control over historical narratives varies.

37. The Special Rapporteur recalls that several human rights provisions protect academic freedoms. In particular, the Committee on Economic, Social and Cultural Rights considers that the right to education can be enjoyed only if accompanied by the academic freedom of staff and students, in particular in higher education, which is especially vulnerable to political and other pressures. Members of the academic community, individually or collectively, must be free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. Academic freedom includes the liberty of individuals to express opinions freely about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional and representative academic bodies and to enjoy their human rights. The enjoyment of academic freedom carries with it obligations, such as the duty to respect the

academic freedom of others, to ensure the fair discussion of contrary views and to treat all without discrimination (see general comment No. 13, paras. 38-40).

38. The Human Rights Committee states that laws that penalize the expression of opinions about historical facts are incompatible with the International Covenant on Civil and Political Rights, which does not permit general prohibitions of expressions of an erroneous opinion or an incorrect interpretation of past events, and that restrictions on the right of freedom of opinion should never be imposed and, with regard to freedom of expression, they should not go beyond what is permitted in paragraph 3 of article 19 or required under article 20 of the Covenant (see general comment No. 34, para. 49).

A. Autonomy of universities and research institutes

39. State control over historical narratives mainly operates by controlling universities and research institutes. This particularly applies to countries in which a public listing of available positions in such institutions is not required by law and people are recruited by a narrow inner circle. Procedures for career advancements of historians may also be driven by political criteria, including cases in which regulated standards of professional advancement require researchers to work inside the framework of specified hypotheses.[9]

40. Systems of financing research that enable political control of academic institutions by ministries and political elites are of concern. Analysis of the allocation of funds, transparency in decision-making and approval criteria shed light on the degree of control exercised.

41. Controlling the university history curricula is another means of controlling historical narratives. The complex process of adopting and accrediting the curriculum frequently passes through a series of university bodies and sometimes requires government approval. When combined with a reduced level of university autonomy, this state of affairs significantly limits the freedom of professors to suggest and conduct their own courses.

42. Prescribing or rejecting thesis topics at the graduate, postgraduate and doctoral levels is another common means of control. Such action can be taken by professors and mentors or by university bodies, in addition to the ministry departments involved in approving topics. Similarly, public research institutes functioning outside the university system may follow a complicated approval procedure for research topics, sometimes requiring ministerial approval. Comparing proposed topics with accepted topics indicates dominant or politically "desirable topics". Such patterns are also visible in calls for new projects and in advertising vacancies, for which ministries determine the focus. So-called "desirable topics" are recognizable by the fact that they fail to undergo change in keeping with normal academic dynamics and remain constant throughout a specific Government's tenure.

43. The applied research methodology can provide further insights. The complete domination of a particular methodological approach (e.g. political history, military

[9] For example, in the former Yugoslavia, the stated goal of an academic paper was to contribute to the development of a "self-managed and non-aligned Yugoslav community of brotherhood and unity".

history or the history of class, religion, anti-colonial or similar struggle) indicates that the primary goal of research is to generate evidence supporting the dominant narrative, rather than independent studies of history based on freedom of choice and diverse methodological approaches.

44. As noted by the Committee on Economic, Social and Cultural Rights, the enjoyment of academic freedom requires institutions of higher education to have sufficient autonomy in terms of self-governance for effective decision-making in relation to their academic work, standards, management and related activities. Self-governance, however, must be consistent with systems of public accountability, especially in respect of State funding. Given the substantial public investment made in higher education, an appropriate balance between institutional autonomy and accountability is required. While there is no single model, institutional arrangements should be fair, just and equitable and as transparent and participatory as possible (see general comment No. 13, paras. 38-40).

B. Access to archives and library funds

45. Research can be restrained by limiting the use of library funds and exchanges with foreign libraries. Access to what are seen as "undesirable" documents can be curtailed, either by open prohibition or if the document is in poor condition. In some countries, library cooperation and publication exchange must be approved by library officials, affording an opportunity to reject the procurement of particular books from foreign libraries. In addition, the overpricing of books can render them inaccessible to poorly paid researchers.

46. Limits on access to archival materials take various forms: complicated procedures for granting special permissions, allowing for arbitrary refusal; restricting the number of archive units that researchers can borrow daily; or unjustified prohibitions on photocopying, scanning or photographing documentation, or arbitrarily setting high prices for such services. Researchers may also face discrimination in access based on their national or ethnic affiliation or be told that controversial documents no longer exist.

47. Post-colonial societies face particular hurdles in researching their past when a substantial part of, or all, archives are located in the former colonizing country, impeding access to research materials and rendering research expensive, sometimes prohibitively so. In some instances, controversial archives have been kept secret or deliberately destroyed.[10] Access can be improved through digitalization and online availability of archives, publishing the relevant volumes of primary sources and creating a system of grants for researching archives located in the former "home country". Open-access policies in this area should be developed, while respecting the right to privacy of persons by introducing an inaccessibility clause following the rules established by archive specialists.

48. In paragraph 19 of its general comment No. 34, on article 19 of the International Covenant on Civil and Political Rights, the Human Rights Committee stated that, to give effect to the right of access to information, States should proactively put in the public domain government information of public interest and

[10] See Eric Albert, "Justice pour les Mau-Mau", *Le Monde*, 10 June 2013. Available from www.lemonde.fr/a-la-une/article/2013/06/10/justice-pour-les-mau-mau_3427618_3208.html.

make every effort to ensure easy, prompt, effective and practical access to such information. This is an important provision regarding access to archives.

C. Dissemination and publication of results

49. Restrictions on publishing and disseminating results are common in authoritarian regimes, where reviewers and editorial boards of publishing companies act more as political censors than as competent expert bodies, obstructing or banning the publication of alternative narratives. More subtle mechanisms of censorship also exist in more democratic societies, however. For example, in countries in which no private foundations finance the publishing of scientific results, control is exercised by extending or denying financial support, thereby impeding the circulation of alternative historical narratives.

50. Monopolies over historical narratives may also be established through the prominence that a State accords to a specific circle of historians, who shape attitudes on critical issues. These persons become the principal arbiters, sitting on various committees that decide upon selections and promotions, grants for projects and publications, and university rankings. The situation is better in countries with a range of professional associations of historians and history teachers competing for membership of such committees. When there is only one association, the fear is that it will be under State control and represent the interest of the State rather than of the profession.

V. Teaching history, teaching histories

51. In history teaching, an important distinction must be made between primary and secondary education, where States bear important responsibilities to ensure appropriate curricula and minimum educational standards, and higher education, where a higher degree of academic freedoms should be enjoyed and where States should refrain from influencing the curriculum. In all cases, States should ensure the independence of professional bodies mandated to define the history curriculum and follow their conclusions and recommendations.

52. Various tools are at the disposal of States to develop a multiperspective approach in history teaching. Developing such policies requires action on several fronts, including:

(a) Setting appropriate aims for history teaching;

(b) Ensuring an appropriate ratio between local, national, regional and global history;

(c) Ensuring that history is not limited to political history;

(d) Ensuring that a wide array of history textbooks are accredited for selection by teachers and giving teachers the liberty to use supplementary teaching materials;

(e) Raising awareness about manipulations in history textbooks and refraining from encouraging such abuse;

(f) Using examinations or appraisals that encourage analysis, syntheses and critical reflections rather than rote learning;

(g) Respecting academic freedoms of teachers and their right to freedom of association, and protecting them from aggression and threat;

(h) Ensuring the continuous education and professional training of history teachers, especially on how to introduce a multiperspective approach in their teaching.

53. No one model suits all situations. Depending on the circumstances, countries that have been engaged in conflict will be able to undertake the writing of common/shared history textbooks through independent mixed commissions of historians. This may, however, be extremely difficult and ambitious, in particular when the countries concerned do not have the same level of development regarding their historiographies.

54. It is of paramount importance that pupils be made aware of transnational perspectives that can help to overcome a narrow nationalistic, ethnic or microfocused identity and understand that history can, and should, be interpreted from a multiperspective approach. Teachers and pupils should critically assess narratives. It is crucial, therefore, to move beyond models using only one textbook, to authorize the use of supplementary teaching materials and to give free access to historical sources. Communities are always internally diverse and suggesting that communities have monolithic narratives must be avoided.

A. Aim of history teaching

55. International instruments contain important indications regarding the objectives of education. Of particular relevance is article 29 of the Convention on the Rights of the Child, under which States parties agree that education is to be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential; respect for human rights and fundamental freedoms; respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; and the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.

56. The challenge is to simultaneously ensure the empowerment of individuals, respect for their human rights, the transmission and enrichment of common cultural and moral values and the building of harmonious and peaceful relationships between individuals and groups. A balanced approach must be adopted when implementing article 29 of the Convention.[11] In particular, the right of individuals and communities to express their identities and enjoy their cultural heritage should not lead to situations in which people, on that basis, create separate, hermetically sealed worlds. Cultural rights protect the right to interact culturally with the other or

[11] See also paragraph 4 of general comment No. 1, on the aim of education, of the Committee on the Rights of the Child.

others, and history should never be manipulated to indoctrinate pupils into believing in mutually exclusive antagonistic identities.

57. Practices where the aim of history teaching appears to be less about transmitting adequate information about the past and more about establishing historical continuity of the current dominant order with past so-called "golden ages" are of particular concern. More generally, assigning a political agenda to history teaching, such as the promotion of patriotism, the strengthening of national pride and the construction of national or regional identities, appears to be common in most States. It is time to question this practice, which is not in accordance with history understood as an academic discipline.

58. It is true, however, that entirely disconnecting history teaching from political objectives is difficult. Positive examples are where the aim of history teaching is more clearly oriented towards the reduction of conflicts within and among societies, the peaceful articulation of social and political controversies and the promotion of democratic principles underpinned by an approach based on human rights. Such goals are attainable only when teaching includes critical thought and analytic learning, thereby encouraging debate, stressing the complexity of history and enabling a comparative and multiperspective approach.

B. Ratio between local, national, regional and global history

59. The relationship between general, regional, national and local history in textbooks is usually determined by the State at the ministerial level, by education commissions or by pedagogical institutes.

60. The recommendations by UNESCO and the Council of Europe to include a balanced ratio of national and general history are rarely implemented. Most often, a marked domination of national history promotes an ethnocentric image of the past that accords centrality to one's own nation, producing a distorted world view.

61. At the other end of the spectrum are situations in which local history is omitted altogether and the emphasis placed on regional, continental or world history. Challenging local historical events may be avoided by studying general history; very small countries may lack a critical mass to develop local historical narratives of their own and/or have them incorporated into the curriculum (see A/HRC/23/34/Add.2, paras. 48-50).

C. Political and other histories

62. History teaching is often limited to political narratives, suggesting to pupils the pre-eminent place of politics in human society. Moreover, political history itself is often reduced to the history of wars, conflicts, conquests and revolutions. This suggests that periods of peace and stability are unimportant and opens space for glorifying war and promoting a military-oriented education. When other histories are taught, such as the history of science, engineering and the arts, and information provided on how developments in these fields affected societal developments, including politics, people learn of the complexities of both the past and the present. Understanding that people make decisions within specific contexts and particular

constraints promotes understanding of the importance of choices and the values of responsibility.

63. It is important that history teaching incorporate a balance of political, social, cultural, scientific and economic history, in addition to the history of everyday life, so as to convey the complexity of human society and the multifaceted reasons leading to certain historical events. A balance also invites the adoption of a wider perspective regarding the contributions of peoples across the world to arts, sciences and philosophy.

D. History textbooks

64. History is one of the few curriculum subjects mandated in education systems throughout the world, indicating both the potential of history teaching to influence pupils and its importance for societies and Governments.

1. Textbooks as a decisive tool for history teaching

65. History textbooks are an important tool in the hands of Governments for transmitting to pupils the official historical narrative. Especially in countries in which history teaching promotes a single narrative, textbooks occupy a key place[12] and are widely considered to be a decisive tool for transmitting government messages to the widest possible audience.[13]

66. The accreditation of one single history textbook is problematic. This includes situations in which States aggressively promote one particular book through subsidies or by purchasing large quantities, thereby influencing selection by schools. Reducing the number of offered textbooks to only one must also be seen as a retrogressive trend. State-sponsored textbooks carry the risk of being highly politicized.[14]

67. While States are entitled to reject a textbook failing to meet required and transparent standards, having a single history textbook inevitably promotes the monopoly of one narrative over all others, especially when laws and regulations do not provide for open tenders enabling competition between textbooks.

68. The possibilities of publishing non-profit scientific books and the legal provisions governing the creation of private publishing companies are important. Positive steps include dedicated governmental funds to encourage the publication of academic works without political influence, following transparent allocation procedures; public procurements of books; and incentives to publishers to publish non-commercial books. Without such assistance and private foundations, publishing academic books is extremely difficult and expands the scope for rejecting so-called "undesirable" manuscripts. Special attention should be paid to State-controlled publishing houses with a near or actual market monopoly that receive financial support to publish so-called "desirable" books.

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[12] See Henry Steele Commager and Raymond Henry Muessig, *The Study and Teaching of History* (Columbus, Merrill, 1980).

[13] See M. I. Finley, *The Use and Abuse of History* (London, Penguin, 1990).

[14] See Stuart J. Foster and Keith A. Crawford, eds., *What Shall We Tell the Children? International Perspectives on School History Textbooks* (Charlotte, Information Age Publishing, 2006).

2. Manipulations in textbooks

69. Textbooks require extensive data to be presented in a very limited space, obliging authors to carry out rigorous data selection. That situation can lead to manipulation, especially in junior elementary grades, where the space in books is the most restricted, forcing authors to express themselves in only a few sentences. The constraint makes textbooks for younger children a particularly effective — and thus dangerous — tool for promoting ideological messages among young, more susceptible, minds. Younger children are also most vulnerable to the dissemination of fear and prejudice when history teaching is used to lay the foundations for violence, especially towards so-called "enemy nations" or peoples.

70. Manipulation in textbooks takes place in numerous ways, including:

(a) Choice of facts, from a weaker to stronger emphasis on certain events to the complete removal of particular data. While the writing of history always entails selecting facts, intentional misuse is primarily based on a purposeful self-serving selection;

(b) Narratives suggesting preferred conclusions. Such messages are found in the text, especially in lesson summaries, and in the questions posed to pupils that directly suggest certain sociopolitically desired conclusions;

(c) Choice of the context in which certain peoples or nations are described, typically in cases of conflicts. Excluding periods of peace and cooperation from history lessons impedes pupils' learning about shared elements of culture, scientific advancements and economic and social structure;

(d) Disseminating stereotypes about nations or particular groups. The selective relating of history as moments of conflict between nations or peoples is used to legitimize contemporary standpoints and promote the notion that the (antagonistic) relations between nations are immutable. The attributes of certain nations or people may be presented as predetermined and specific identity markers resorted to so as to naturalize or sacralize historic relationships. For example, the French expression "*traite des noirs*" (slave trade, trade of blacks) implies that black people were traded because of the colour of their skin, rather than because of social and historical relations in a specific context. Such qualifications, often promoted by those initiating or benefiting from a system of domination, veil the historical and therefore impermanent dimension of the relationship and are so routinely used that no one interrogates their relevance;

(e) The use of photographs to transmit specific messages, which can convey stereotypes and also be brutal. When used to create a collective feeling of victimization, this practice relies on evoking emotions instead of applying critical analysis in history teaching. Young children are unprepared to critically process the frightening images imposed;

(f) Geographic or historical maps and other visual material can also transmit political messages (e.g. painting neighbouring regions or countries in a uniform grey colour, suggesting that such places are of no significance; historical maps showing the former size of the country; tendentious geographic maps completely ignoring historical events);

(g) Using particular terms or phrases to convey a specific understanding of events (e.g. using terms such as "war of liberation" or "conquest", "uprising" or "war of independence", "revolution" or "counter-revolution" and "catastrophe");

(h) The use of apodictic language that leaves no room for doubt and forecloses debate and dilemma;

(i) Specific linguistic styles, figures of speech, metaphors and other means that, by dramatizing certain historical events, achieve desired emotions among pupils (primarily the use of hate speech). As with brutal photographs, the purpose is to create fear, which provides a good foundation and motivation for revenge afterwards;[15]

(j) Constructing a mythical past of one's own people, its place in history and its characteristics. Common elements include stressing the superiority of one's own nation over the other and creating the impression that "we" never waged wars of conquest or behaved unjustly. This can create a historical indulgence for present or future actions. An important component is projecting the impression of a victim nation, so as to secure a permanent moral and political privilege that can be "redeemed" in the present, either in the context of international relations or as a means of social cohesion within State borders;[16]

(k) Skipping over or underplaying defeats while emphasizing the victories, so as to suggest that the nation was always on the "right" side of history and never harmed anyone;

(l) Transmission of a particular philosophy of history. Many ideologies presume a strong historical determinism, presenting events as predetermined and unavoidable. This eliminates any awareness of the importance of individuals, groups and different parts of society who influence historical events and the decision-making process.

E. Supplementary teaching materials and activities

71. While States should always ensure that educational material is exempt from hate speech, it is essential to allow the use of supplementary teaching material in classes without requiring the permission of the authorities. Such material can follow the curriculum, but also take up subjects outside the required programme. This is particularly important when history teaching is predominantly set up as a political endeavour. Supplementary material allows the teacher to introduce pupils to domains of history other than political history, which often hold pupils' attention more than narrow political history.

72. Ideally, additional supplementary material should include primary historical sources that bring pupils closer to the periods being studied. Working with historical sources requires a critical approach, especially when teachers point out sources that interpret the same event differently.

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[15] See David R. Olson, "On the language and authority of textbooks", in *Language, Authority and Criticism: Readings on the School Textbook*, Suzanne de Castell, Allan Luke and Carmen Luke, eds. (London, Falmer Press, 1989), p. 241.

[16] See Peter Burke, *Varieties of Cultural History* (Ithaca, Cornell University Press, 1997), p. 53; and P. Nora and F. Chandernagor, *Liberté pour l'histoire* (Paris, Editions du CNRS, 2008).

73. Given that it may be difficult to adapt traditional textbooks to a multiperspective approach, work may need to be done to model a textbook approach that presents a range of competing narratives in a problematic way.

F. History teachers

74. Teachers play a central role in the process of knowledge acquisition. Their education, skills and training determine how much innovation they introduce into the learning process and whether they manage to compensate for inadequacies with their inventiveness. At the same time, teachers can also be the final barrier that in the end betrays well-designed programmes and intentions.

75. History teaching can be set up defining the whole curriculum from beginning to end in ways that leave teachers no room to introduce additional material and subjects that would encourage pupils to engage in critical thinking. Nevertheless, teachers can, through their lectures or organized discussions in classes, problematize the controversial themes of the past. When teachers do not adhere to the required programme and opt to teach outside the curriculum, however, there is a risk of totally subjective interpretations.

76. Countries that provide teachers with a certain amount of time and freedom to create their own programmes fare better. For example, in Serbia, a 2002 law on primary and secondary education allocated 30 per cent of time for that purpose. For the approach to be successful, however, it is essential that teachers be well educated, trained through special seminars and encouraged to create the syllabus independently.

77. It is important that States respect, in accordance with article 22 of the International Covenant on Civil and Political Rights, the rights of teachers to freedom of association, in particular freedom to join professional associations that enable them to connect, become acquainted with the work of other teachers, exchange material and organize teachers' continued education. States should also protect teachers from attacks by members of the community in which they serve, who may consider that their teaching is not in conformity with the community's "truths".

78. The constant training and education of teachers is of utmost importance. Teachers should be facilitated to recognize that they inevitably see history through their own background.

VI. Good practices

79. Various examples are provided below to illustrate ways of moving forward in the area of history teaching.

80. The UNESCO General and Regional Histories (dealing with such topics as the history of humanity, Africa, Latin America, civilizations of Central Asia, the Caribbean and the different aspects of Islamic culture) promote a multidisciplinary and interdisciplinary approach that offers a pluralistic vision of history and constitutes one of the finest contributions to the dialogue between cultures and civilizations. The approach consists of what might be termed "disarming" history

and rising above the dominant perception of history as a study of nations. It aims to demonstrate that scientific and cultural achievements result from intense human interactions across time and space. One current pioneering initiative by UNESCO, in close cooperation with the African Union Commission and the ministries of education of African countries, is the elaboration of a common pedagogical content based on the *General History of Africa*, intended for use in all African primary and secondary schools.

81. The Franco-German joint history textbooks, *Histoire/Geschichte*, resulted from a cooperative effort of large teams of historians from both countries.[17] The project has developed an identical narrative about the past in both countries; textbooks are in both languages and founded on the highly developed scientific historiography in both countries. French and German historians reached a consensus in their approach and interpretation of even the most controversial events of their common history,[18] overcoming the usual modes of interpretation to reach a common narrative and offer pupils different perspectives. The project has stimulated discussions about producing such books in other countries with similar problems in interpreting shared history.[19]

82. In South-East Europe, a regional approach was used by the Joint History Project of the Thessaloniki-based Center for Democracy and Reconciliation. Following parallel analyses of textbooks from 12 countries,[20] four volumes of supplementary teaching material for high schools students were published in nine languages. Entitled *Teaching Modern Southeast European History: Alternative Educational Materials*, the volumes address the most sensitive issues in the region. The multiperspective approach ensures that every event is shown, by way of historical sources, from the perspectives of the countries involved. Considering that historiographies in those countries are underdeveloped and seen as closely linked to political agendas, publishing the historical sources and supplementary teaching material was a reasonable way of presenting sensitive issues.

83. Another model has been developed by the Peace Research Institute in the Middle East, a non-governmental organization founded in 1998 by Palestinian and Israeli researchers and peace activists, in the form of a binational history textbook. In view of the experts' assessment that a common or even a bridging narrative cannot be reached at this time, the book relates Palestinian and Israeli historical narratives of the twentieth century in three-columned pages: one column carries the Palestinian narrative, another the Israeli narrative. The third is an empty column for high school students to write down their own ideas, reactions, questions, additional data or conclusions. The book has not, however, been accepted or approved by the

[17] *L'Europe et le monde de l'Antiquité à 1815*, published in 2011; *L'Europe et le monde du congrès de Vienne à 1945*, published in 2008; and *L'Europe et le monde depuis 1945*, published in 2006.

[18] See www.bpb.de/system/files/pdf/9XFS2N.pdf.

[19] See also the current project of a German-Polish textbook, available from www.gei.de/en/research/europe-narratives-images-spaces/europe-and-the-national-factor/german-polish-textbook-commission.html. See also K. Korostelina and S. Lässig, eds., *History Education and Post-Conflict Reconciliation: Reconsidering Joint Textbook Projects* (Abingdon/New York, Routledge, 2013).

[20] See Christina Koulouri, ed., *Teaching the History of Southeastern Europe* (Thessaloniki, Center for Democracy and Reconciliation in Southeast Europe, 2001); Christina Koulouri, ed., *Clio in the Balkans: The Politics of History Education* (Thessaloniki, Center for Democracy and Reconciliation in Southeast Europe, 2002).

relevant ministries of education and is therefore not used openly in Israeli and Palestinian schools.[21]

84. In Canada, there have been interesting developments regarding the history of indigenous peoples. In 2011, the Canadian Truth and Reconciliation Commission, established under the Indian Residential Schools Settlement Agreement, published, as mandated, a history book on the residential school system, which affected many generations of indigenous children. It remains to be seen how such history can be included in the mainstream curriculum (see www.trc.ca). Brazil, for its part, has introduced the compulsory study of the general history of Africa and the history of people of African descent in primary and secondary schools, but has encountered difficulties in implementing the law (see A/HRC/17/38/Add.1, para. 29).

85. Across the world, organizations have developed that promote history textbook revision and dialogue, including, in particular, the Georg Eckert Institute for International Textbook Research, the European Association of History Educators, the Peace Research Institute in the Middle East, the Institute for Monitoring Peace and Cultural Tolerance in School Education and the Northeast Asian History Foundation. States and other stakeholders are encouraged to support the establishment of similar institutions in other regions.

VII. Conclusion and recommendations

86. In too many cases around the world, the historical narratives promoted by States in schools are problematic from a human rights perspective. In promoting nationalistic political agendas and/or monolithic views of dominant powers, education policies relating to history teaching fail to acknowledge cultural diversity and the multiplicity of historical narratives between and within communities. Those policies are at odds with the right to education, the right of all individuals, groups and peoples to enjoy and to have access to their own cultural heritage as well as that of others, the right to freedom of opinion and expression and the right to information, regardless of frontiers. In many instances, such policies depend on unjustified restrictions on academic freedoms and the promotion of a single history textbook in schools. In the most acute cases of conflict, such policies can be seen as either the continuation of war in the area of culture and education, or as a means to prepare revenge in the future. They constitute worrying obstacles to peacemaking and peacebuilding.

87. The right of children to develop their own historical perspective throughout education is to be considered an integral part of the right to education. Indoctrination on any grounds, including political or religious ideology, should not be tolerated in either public or private schools. History teaching should be based on the understanding of history as an academic discipline.

88. The Special Rapporteur recommends that States make or continue efforts to reform school history curricula. In particular:

[21] See www.gei.de/en/research/textbooks-and-conflict/4-learning-in-post-conflict-societies/schulbuchprojek-israel-palestina.html.

(a) History teaching should aim at fostering critical thought, analytic learning and debate; stressing the complexity of history, it should enable a comparative and multiperspective approach. It should not serve the purpose of strengthening patriotism, fortifying national identity or shaping the young in line with either the official ideology or the guidelines of the dominant religion;

(b) Processes for reforming curricula and formulating history teaching standards must be transparent and include the input of practitioners and professional associations. Appointments to and the functioning of committees and sections of ministries dealing with such matters should also be transparent and ensure that there is no conflict of interest. A good practice is contracting out such work to professional pedagogical institutions independent from ministries. The adoption of these programmes requires a wide debate among professional bodies, associations and organizations;

(c) Official standards should determine the goals and outcomes of history teaching without prescribing the content of teaching material. Such standards should be made publicly available. Political control exercised through official guidelines, including direct recommendations regarding which periods are to be stressed, how they are to be interpreted and ready-made directives on the conclusions, must be avoided. Guidelines for writing textbooks should be developed to enable authors to offer various interpretations and include various standpoints in textbooks;

(d) A wide array of textbooks by a range of publishers should be accredited, thereby allowing teachers to choose from among them. In addition, the curriculum should allocate a certain amount of time (ideally at least 30 per cent of the time) for teachers to introduce supplementary material, in particular authentic historical sources, without prior approval by the ministry;

(e) Approval and accreditation procedures and the criteria for textbook selection should be clear and rely on expertise in history and education, not on particular ideological and political requirements. Good practices in terms of approving and accrediting textbooks consist of open tenders in which all publishers are able to bid equally and independent expert committees reviewing and approving those meeting the required standards;

(f) The content of assessment and examinations should be reformed to match the reform of curricula and the establishment of history teaching standards;

(g) While diverse communities and groups should be consulted, the elaboration of history textbooks should be left to historians; decision-making by others (especially politicians or thinkers from religious, literary or wider intellectual circles) should be avoided.

89. The Special Rapporteur recommends that States review their legislative frameworks to ensure that they fully respect academic freedoms for teaching staff, researchers and pupils and that they ensure the autonomy of universities. In particular:

(a) States should ensure that university staff are recruited and promoted without discrimination based on national, linguistic or ethnic affiliation, religion or political opinion. Conditions for employment and promotion in

universities and research institutions should be clearly defined and transparent. Staff vacancies should in all cases be publicly listed;

(b) Researchers should be free to choose their research subject and to disseminate their results. They should not be constrained to research the history of the nation or of the community or reduced to investigating a particular time frame, but be encouraged to research all periods of history, from prehistory to contemporary times. The financing of research institutions, of specific projects in the field of history, in addition to scientific journals and the publishing activities of scientific institutes or universities, should be transparent. The law should provide for the publication of non-profit history books and guarantee the freedom to publish scientific results;

(c) States should review regulations and practices regarding the use of libraries and archives. Issues to be examined include time limitations for the opening of archival records; procedures for granting access to archive documentation; provisions for classifying documents as State secrets; researchers' opportunities to photocopy, scan or photograph documentation; and possibilities of foreign researchers having access to archives and effective remedy in case of refusal to grant such access;

(d) States should make available important archives relating to the history of other countries, in particular former colonies, by digitizing records and making them freely available, and should consider research cooperation.

90. The Special Rapporteur recommends that:

(a) States ensure continuing education and regular high-quality training of teachers at universities and within supplementary seminars and workshops. The criteria for hiring and promoting history teachers should be transparent, and continuous education should be a precondition for their professional promotion;

(b) Relevant ministries call for open competitions to organize seminars and conferences in which various non-governmental professional organizations could participate and in the process receive accreditation for seminars. Doing so would widen the selection of permanent education for teachers and reduce the possibility of political control and State monopoly;

(c) Teacher education in post-conflict situations be designed to develop new competencies specific to building and helping to sustain peace;

(d) Learning materials for adults be developed, in particular in societies engaged in peacebuilding processes;

(e) States respect and promote the right of teachers to freely form professional associations.

91. The Special Rapporteur recommends that efforts be made, or pursued, to include the views and perspectives of all parties and communities in historical narratives (textbooks) by, for example, establishing commissions of historians comprising individuals from various countries or communities. Such commissions should enjoy the support of the State, regardless of whether they operate as parts of ministries or independently. In this, greater independence is achieved if members are appointed by professional bodies and associations

(e.g. associations of historians, history teachers, research institutes and universities, pedagogical institutes or minority associations).

92. **States should respect professional standards as defined by the profession of historians.**

93. **The Special Rapporteur recommends that States fully implement international provisions regarding international cooperation in the area of culture and education, in particular article 28 (3) of the Convention on the Rights of the Child and article 15 (4) of the International Covenant on Economic, Social and Cultural Rights for history writing and teaching.**

Annex

Experts participating in and contributing to the meeting held in Londonderry, United Kingdom of Great Britain and Northern Ireland, on 2 and 3 July 2013

Name	*Affiliation*
Sami Adwan	Professor of Education and Teacher Training, Bethlehem University; Co-Founder and Co-Director, Peace Research Institute in the Middle East (through correspondence)
Noro Andriamiseza	Programme Specialist, Education for Peace and Human Rights Section, United Nations Educational, Scientific and Cultural Organization, Paris
Mélanie Borès	"PIMPA" project (politics of memory and art practices: the role of art in peace and reconstruction processes), Geneva University of Art and Design, Geneva
Dominique Bouchard	Curator of Education and Outreach, Hunt Museum, Limerick, Ireland
Dominic Bryan	Director, Institute of Irish Studies, and Reader in Social Anthropology, Queen's University, Belfast, United Kingdom of Great Britain and Northern Ireland
Bob Collins	Chair, Arts Council of Northern Ireland, and Broadcasting Authority of Ireland, Dublin
Christine Collins	Commissioner, Northern Ireland Human Rights Commission, Belfast, United Kingdom of Great Britain and Northern Ireland
Elizabeth Craig	Lecturer, Sussex University, United Kingdom of Great Britain and Northern Ireland
Willie Doherty	Artist, Londonderry, United Kingdom of Great Britain and Northern Ireland
Pierre Hazan	Co-Director, "PIMPA" project, Geneva University of Art and Design, Geneva
John Johnston	Co-Director, Centre for Arts and Learning, Goldsmiths, University of London
Milton Kerr	Commissioner, Northern Ireland Human Rights Commission, Belfast

Name	*Affiliation*
Nina Kochelyaeva	Academic Secretary, Russian Institute for Cultural Research, Moscow
Simone Lässig	Professor, History Department, University of Braunschweig, Germany; Director, Georg Eckert Institute for International Textbook Research, Braunschweig
J. Wilton Littlechild	Founder, International Organization of Indigenous Resource Development; Chair, Expert Mechanism on the Rights of Indigenous Peoples
Deirdre Mac Bride	Cultural Diversity Programme Director, Northern Ireland Community Relations Council, Belfast
Mumsy Malinga	Workshop Facilitator, Apartheid Museum Johannesburg, South Africa
Mikel Mancisidor	Member, Committee on Economic, Social and Cultural Rights; Director, UNESCO Etxea-Centro UNESCO del País Vasco, Bilbao, Spain
Alan McCully	Senior Lecturer in Education, School of Education, University of Ulster, Ireland
Michael O'Flaherty	Chief Commissioner, Northern Ireland Human Rights Commission, Belfast
Sylvie Ramel	Senior Researcher, "PIMPA" project, Geneva University of Art and Design, Geneva
Nobuhiro Shiba	Professor Emeritus, Graduate School of Arts and Sciences, Division of Area Studies, University of Tokyo, Japan
Dubravka Stojanović	Professor, History Department, Faculty of Philosophy, Belgrade University, Belgrade
Ibrahim Thioub	Professor, Dakar University; Director, Centre Africain de recherches sur les traites et les esclavages, Dakar; Associate Fellow, Nantes Institute for Advanced Study, Nantes, France

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Sixty-eighth session
Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, submitted in accordance with Human Rights Council resolutions 6/29 and 15/22.

* A/68/150.

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Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Summary

In the present report, the Special Rapporteur considers the right to health obligations of States and non-State actors towards persons affected by and/or involved in conflict situations. The report's scope extends beyond armed conflicts and includes internal disturbances, protests, riots, civil strife and unrest, occupied territories and territories with a constant military presence. The effect of conflict on the right to health of affected populations may endure long after the cessation of active hostilities. Throughout the continuum of conflict, it is therefore essential that States ensure the full realization of the right to health of populations affected by and/or involved in conflict.

In this context, the Special Rapporteur addresses the availability, accessibility and acceptability of health facilities, goods and service during and after conflict. He outlines State obligations, international obligations of entities other than the primary State and responsibilities of non-State armed groups. The report also focuses on vulnerable groups, which may experience greater challenges in the enjoyment of their right to health as a result of conflict, and addresses the need for accountability and remedies for violations of the right to health. The Special Rapporteur concludes his report by emphasizing the importance of effective participation of affected communities and putting forward a set of recommendations on concrete and continuous steps towards the full realization of the right to health of persons affected by conflict situations.

I. Introduction

1. Conflicts pose immense challenges to the realization of the right to health. Some 1.5 billion people currently live in conflict-affected areas or fragile States, which face levels of child mortality and malnutrition twice as high as countries that are not affected by conflict, have poverty levels that are 21 per cent higher, and are furthest away from achieving the Millennium Development Goals.[1] Conflict affects health not only through direct violence, but also through the breakdown of social structures and health systems, and lack of availability of underlying determinants of health. This leads to a high incidence of preventable and treatable conditions including malaria, diarrhoea, pneumonia and malnutrition.[2] These health effects often persist well after the end of active hostilities, and negatively impact health indicators for years thereafter.[3] Addressing the right to health in conflict and post-conflict situations is therefore imperative to realizing the right to health for all.

2. Contemporary conflicts take a variety of forms, including internal disturbances, protests, riots and civil strife and unrest, in addition to armed conflicts as addressed under international humanitarian law. They also include occupied territories and territories with constant military presence where populations may be affected by conflict for many years despite the lack of active hostilities. The report defines State obligations in relation to the right to health in all such conflict situations. Situations which do not meet the criteria for armed conflict or occupation are governed exclusively by human rights law, including the right to health. Armed conflict however is governed by international humanitarian law as well as human rights law.

3. Armed conflict is divided into international armed conflict — where there is "resort to armed force between States",[4] and non-international armed conflict — where there is "protracted violence" involving at least one non-State organized armed group.[5] In both situations, international humanitarian law prescribes rules of conduct for States and non-State organized armed groups that are parties to the conflict. These govern circumstances such as the conduct of hostilities, treatment of prisoners, guarantees of fundamental rights such as access to justice and treatment of civilians and civilian property.

4. Human rights law continues to apply in situations governed by international humanitarian law. This has been affirmed by the International Court of Justice,[6]

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[1] World Bank, *World Development Report 2011: Conflict, Security and Development* (Washington D.C., 2011), pp. 2, 5.

[2] International Rescue Committee (IRC), *Mortality in the Democratic Republic of Congo: an ongoing crisis* (New York, 2007), p. ii. Available from www.rescue.org/sites/default/files/migrated/resources/2007/2006-7_congomortalitysurvey.pdf.

[3] Ibid., World Bank, *World Development Report 2011*, p. 2.

[4] International Tribunal for the Former Yugoslavia, *Prosecutor v. Tadic*, case No. IT-94-1-A, ICTY, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 70.

[5] International Committee of the Red Cross (ICRC), "How is the term 'armed conflict' defined in international humanitarian law?", Opinion Paper (Geneva, 2008). Available from www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf.

[6] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 112; *Case Concerning the Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) I.C.J. Reports 2005*, para. 216.

human rights treaty bodies,[7] regional bodies such as the European Court of Human Rights[8] and domestic courts.[9] The General Assembly, in its resolution 57/233, and the Security Council, in its resolution 1181 (1998), have also condemned violations of human rights in armed conflict.

5. The concurrent application of both sets of laws in armed conflict enhances the rights of affected populations. Additionally, human rights law ensures protection of affected populations where the application of international humanitarian law is disputed. Concurrent application is also helpful in situations directly concerning the right to health, such as the effects of general insecurity on health and its underlying determinants that may not be adequately captured under international humanitarian law. Human rights law also contains more specific obligations regarding availability, accessibility, acceptability and quality of health services than international humanitarian law does.

6. Both international humanitarian law and human rights law share the aim of protecting all persons and are grounded in the principles of respect for the life, well-being and human dignity of the person.[10] They provide complementary and mutually reinforcing protection.[11] The application of human rights law to conflict would ensure greater protection of civilian population and additional accountability mechanisms for States and remedies for affected population.

II. Conceptual framework

7. The right to health in international law is, inter alia, contained in article 12 of the International Covenant on Economic, Social and Cultural Rights. The right to health framework is set forth in general comment No. 14 of the Committee on Economic, Social and Cultural Rights, which interprets the right to health and mandates States to respect, protect and fulfil the right to health of everyone, including persons affected by and/or involved in conflicts.

8. The right to health framework comprises a range of socioeconomic aspects, termed as underlying determinants such as nutritious food, potable water, housing, a functioning health system and situations of violence and conflict. Conflict has negative repercussions on other underlying determinants, as it can result in a breakdown in systems and infrastructures, including health systems. Conflicts can also result in worsening public health conditions due to physical injuries, poor mental health, an increase in malnutrition, particularly among children, and outbreaks of communicable diseases.[12]

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[7] See *Sergio Euben López Burgos v. Uruguay*, communication No. R.12/52, A/36/40, annex XIX; para. 176; concluding observations of the Committee on Economic, Social and Cultural Rights: Israel (E/C.12/1/Add.69), para. 19.

[8] European Court of Human Rights, *Loizidou v. Turkey*, application No. 15318/89, judgement, 28 December 1996, para. 44.

[9] *Public Committee against Torture in Israel et al. v. Government of Israel and others*, High Court of Justice, case No. 769/02, 14 December 2006, para. 18.

[10] Office of the High Commissioner of Human Rights (OHCHR), *International Legal Protection of Human Rights in Armed Conflict* (New York and Geneva, 2011), p. 7.

[11] Ibid., p. 1.

[12] World Health Organization (WHO), "Briefing note on the potential impact of conflict in Iraq: March 2003" (Geneva, 2003), p. 1.

A. Right to health framework in times of conflict, including armed conflict

9. States are obliged to utilize the maximum available resources towards the realization of economic social and cultural rights, including the right to health. An aspect of this obligation is that the right to health is progressively realizable. However, due to the destruction or diversion of resources to military or police needs, conflicts often reduce the availability of resources which may, at times, be detrimental to the right to health.[13] Even where resources are available, States may not be able to make use of them due to the insecurity and poor infrastructure in many conflict environments.

10. Nonetheless, progressive realization is a specific and continuous State obligation. It does not dilute certain immediate obligations of States, including taking concrete steps towards the full realization of the right to health to all, without discrimination and regardless of the status of persons as combatants or civilians.

11. Furthermore, the right to health framework imposes upon States certain core obligations. Core obligations are minimum essential levels of the right to health, non-compliance with which cannot be justified even in times of resource constraints as they are non-derogable. These include, inter alia, the obligation of States to ensure equitable distribution and access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups; the obligation to provide essential medicines; and the obligation to formulate a national health plan or policy in a transparent and participatory way, taking into consideration the special needs of vulnerable populations. Therefore, even if conflicts result in resource constraints, States are required to ensure the availability, accessibility and acceptability of good quality health facilities, goods and services, especially to groups rendered vulnerable by conflict.

12. A crucial facet of the right to health framework is the effective participation of affected people and communities, especially vulnerable groups. Effective participation should be ensured in all phases of formulating, implementing and monitoring decisions which affect the realization and enjoyment of the right to health in times of conflict. However, policies thus formulated should not be limited to the views of the majority and should take into account the views and needs of the minority within the participating group. Involvement in decision-making processes empowers affected communities and ensures ownership of decisions and resources, which leads to sustainable systems and, potentially, the resolution of conflicts. The participation of affected populations ensures responsive and effective laws and policies by taking into consideration the needs of the people. This is of special significance in protracted conflict situations, in post-conflict situations, in areas with a constant military presence and in areas under occupation. Informed participation can only be ensured when affected populations have the ability to seek and disseminate information affecting their health.

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[13] Solomon R. Benatar, "Global disparities in health and human rights: a critical commentary", *American Journal of Public Health*, vol. 88, No. 2 (February 1998), p. 296; Barry S. Levy and Victor W. Sidel, "The health consequences of the diversion of resources to war and preparation for war", *Social Medicine*, vol. 4, No. 3 (September 2009) p. 133.

B. State obligations

13. As at other times, States have the obligation to respect, protect and fulfil the right to health in conflict. This includes situations where States occupy or otherwise exercise effective control over foreign territory, where the full spectrum of obligations under the right to health applies.[14] States also have other human rights obligations, including but not limited to the right to life and the obligation to refrain from torture and other forms of cruel, inhuman or degrading treatment or punishment.

14. The obligation to respect the right to health requires States to not interfere with the enjoyment of the right to health of people by refraining from discrimination. States should neither formulate policies nor act in ways which create barriers to the enjoyment of the right to health, such as obstructing access to health facilities, goods and services generally or to members of disfavoured groups.

15. The obligation to protect the right to health requires States to prevent interference by third parties. States should ensure that third parties such as health professionals do not violate the right to health by providing health care in a discriminatory manner. States in conflict may face unique challenges with respect to the obligation because of the presence of armed groups operating beyond the control of the State. In such cases, States should take concrete steps to provide protection for health-care workers and individuals seeking health-care services. States should also formulate policies on engaging with third parties, such as non-State armed groups, over their responsibility under human rights law or international humanitarian law, such as the obligation of States to make available health facilities, goods and services and the responsibility of non-State armed groups to refrain from preventing delivery of health care.

16. The obligation to fulfil the right to health by facilitating, providing and promoting conditions conducive to its enjoyment may also be difficult in conflict due to resource constraints or security reasons. States should, however, make available essential and minimum levels of health facilities, goods and services. For instance, States may be obliged to fulfil the right to health by making available ambulances during protests or riots. States may also fulfil the right to health by entering into ceasefire agreements with non-State armed groups to ensure delivery of health services such as immunization and vaccination programmes. States could provide information about traditional medicine and support its use by communities who may be unable to access institutional care due to conflict. In the absence of their own capacity, States should request assistance from other States, civil society and humanitarian organizations, especially to fulfil their core obligations. States should not obstruct humanitarian organizations and practitioners of traditional and community-based medicine from providing health-care services.

[14] *Legal Consequences of the Construction of a Wall*, para. 112.

III. Availability, accessibility, acceptability and quality of health facilities, goods and services

17. Availability, accessibility and acceptability of quality health facilities, goods and services are critical in times of conflict. A functioning health system, including health-care workers, is vital to the enjoyment of the right to health of people affected by and/or involved in conflict.

A. Non-discrimination and medical impartiality

18. The right to health framework obliges States, including public health-care workers, to ensure access to health facilities, goods and services, without discrimination. Refusal to treat persons wounded in conflict or providing preferential treatment to people of the same allegiance constitutes a direct violation of the right to health.

19. Moreover, acceptability requires health facilities, goods and services to be in line with medical ethics. This includes provision of impartial care and services by health professionals to people affected by conflict.[15] Medical impartiality in treating wounded people is also mandated by international humanitarian law.[16] Therefore, health professionals have obligations vis-à-vis provision of health services to people affected and/or involved in conflict.

20. The right to health framework requires that prisoners and detainees be allowed equal access to health facilities, goods and services. International humanitarian law also requires prisoners and detainees to be treated humanely with access to medical care.[17] Yet in many conflict situations, prisoners and detainees are restricted from accessing health facilities, goods and services. This contravenes the non-discriminatory protections afforded to them under the right to health.[18]

B. Legal barriers

21. States may enact laws that impose a duty on health-care workers to report persons who may have committed a crime. However, some States have enacted laws and policies restricting or criminalizing provision of medical care to people opposing the State, such as political protestors[19] and non-State armed groups. Laws criminalizing support for terrorists or others opposing the State may also be inappropriately applied to the provision of medical care. Consequently, doctors and other health-care workers have been arrested, charged and sentenced for acting

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[15] World Medical Association, *Regulations in Times of Armed Conflict and Other Situations of Violence*, paras. 1-3.

[16] ICRC, "Health care in danger: the responsibilities of health-care personnel working in armed conflicts and other emergencies" (Geneva, 2013), p. 35.

[17] See common article 3, Geneva Conventions of 1949 for the protection of victims of war and Additional Protocol II thereto.

[18] OHCHR and United Nations Assistance Mission in Afghanistan, "Treatment of conflict-related detainees in Afghan custody" (Geneva, October 2011), p. 3.

[19] Physicians for Human Rights (PHR), "Under the gun: ongoing assaults on Bahrain's health system" (Cambridge, Massachusetts and Washington, D.C., 2012), p. 5.

within their professional duty of ensuring medical impartiality.[20] Such laws may deter health-care workers from providing services in conflict situations due to fear of prosecution, thus creating a chilling effect on health-care providers.

22. The fear of being reported to law enforcement agencies also prevents access to health facilities and services by patients. This is especially true of people wounded as a result of direct involvement in conflict. However, criminalization also has a chilling effect on people who are not involved in conflict, who may avoid seeking health services because they fear being suspected of involvement in the conflict.

C. Physical barriers

23. Availability and accessibility of functioning hospitals and clinics are essential to the enjoyment of the right to health. States are under the obligation to ensure that health facilities are not harmed as a consequence of conflict. However, a number of physical barriers are deployed in times of conflict which severely affect access to health facilities and services. Obstacles such as forcible detours, arbitrary stops at checkpoints,[21] imposition of travel permits[22] and interrogation of patients result in worsening medical conditions of patients. Other measures such as blockades (S/2012/376, para. 11), long or indeterminate curfews and roadblocks also restrict movement of people and transport, thereby negatively effecting access to and delivery of essential health-care services in conflict-affected areas.[23] States have also prevented civilian groups from accessing medical goods, especially life-saving medicines and supplies by obstructing, restricting, limiting or diverting medical supplies.[24]

24. Where restricting the right to health may be necessary, States should adopt the least restrictive alternative. States should ensure that the objective of such barriers is legitimate, and that the restrictions are proportionate to achieving the objective. For instance, States should ensure that movement restrictions for people in conflict areas are legitimate and essential, and provide exceptions for access to health facilities, goods and services which can be exercised with minimal delays. States should also take steps to enable passage of individuals in need of health services in insecure areas.

25. Persons who require continuous care have particular health needs which, if unaddressed, can increase unnecessary deaths during conflict. For example, treatment interruption and lack of availability of treatment may render people living with HIV, tuberculosis and cancer, more vulnerable to ill-health. The lack of availability of medication and psychosocial services can likewise prove especially

[20] Ibid., p. 4.

[21] M. Rytter and others, "Effects of armed conflict on access to emergency health care in Palestinian West Bank: systematic collection of data in emergency departments", *British Medical Journal*, vol. 332, No. 7550 (13 May 2006), p. 1123.

[22] WHO, "Right to health: barriers to health access in Palestine Territory, 2011 and 2012", special report (Geneva, 2013), pp. 11-12.

[23] "Nepal: reproductive health and conflict", Integrated Regional Information Network (IRIN), Humanitarian news and analysis, 26 April 2006. Available from www.irinnews.org/report/34255/nepal-reproductive-health-and-the-conflict.

[24] Report of the Secretary-General's Internal Review Panel on United Nations Action on Sri Lanka, November 2012, p. 18.

detrimental to mental health patients, some of whom may require continuous treatment.[25]

D. Attacks on health facilities and health-care workers

26. Destruction of health infrastructure by States, or failure to protect against such destruction by third parties, impairs the availability and accessibility of quality health facilities, goods and services. Intentional targeting of health facilities also constitutes a violation of the principle of distinction under international humanitarian law, which obliges parties to the conflict to refrain from attacking medical personnel, units, material and transports unless they are used to commit hostile acts outside their medical and humanitarian functions. Acts that do not involve specific targeting of health facilities may also violate the right to health where the acts increase the risk of damage to the facility or decrease patient access to it, such as by locating military outposts or weapons in the vicinity of a clinic.

27. Health-care workers are essential for ensuring availability of health-care services. States therefore have an immediate and continuous obligation to provide health-care workers and humanitarian organizations with adequate protection during periods of conflict.

28. Attacks on health workers including assaults, intimidation, threats, kidnapping, and killings, as well as arrests and prosecutions, are increasingly used as a strategy in conflict situations.[26] Conflict-affected areas have recorded disruption in supply chains, looting of health facilities, demanding of confidential information about patients, intentional and recurrent shelling and bombardment of clinics and hospitals, and shooting at ambulances carrying patients to target civilians and health-care workers as a military strategy.[27] In countries with poor health infrastructure, as may be the case with most conflict-affected regions, destruction of even a single hospital or attacks on already scarce health-care workers can have a devastating impact on the availability and accessibility of health services and therefore on public health.[28] Furthermore, health-care workers may condemn the actions of security forces or may not cooperate in providing information about patients where laws may violate fundamental human rights. Such health-care workers may frequently be harassed, relocated, tortured, arrested and sentenced.[29]

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[25] Bayard Roberts and others, "Post-conflict mental health needs: a cross-sectional survey of trauma, depression and associated factors in Juba, Southern Sudan", *BMC Psychiatry*, vol. 9, No. 7 (2009), pp. 7-8. Available from www.biomedcentral.com/content/pdf/1471-244X-9-7.pdf.

[26] Saúl Franco and others, "The effects of armed conflict on the life and health in Colombia", *Ciência & Saúde Coletiva*, vol. 11, No. 2 (June 2006), p. 357; John M. Quinn and others, "Iraqi physician brain drain in prolonged conflict", *The New Iraqi Journal of Medicine*, vol. 7, No. 1 (April 2011) pp. 91-92; Leonard S. Rubenstein and Melanie D. Bittle, "Responsibility for protection of medical workers and facilities in armed conflict", *Lancet*, vol. 375, No. 9711 (23 January 2010), p. 332.

[27] Human Rights Watch, "Sri Lanka: repeated shelling of hospitals evidence of war crimes", 8 May 2009. Available from www.hrw.org/news/2009/05/08/sri-lanka-repeated-shelling-hospitals-evidence-war-crimes.

[28] ICRC, "Health care in danger: a sixteen-country study" (Geneva, July 2011), p. 3. Available online in English only from www.icrc.org.

[29] PHR, "Under the gun", p. 6; Médecins Sans Frontières (MSF), "Syria two years on: the failure of international aid", special report (New York, 6 March 2013). Available from www.doctorswithoutborders.org/publications/article.cfm?id=6669.

29. Such attacks not only violate the right to health of people affected by conflict, including people involved in the conflict, but may also cripple the health-care system as a whole. Insecurity, stemming from the targeting of health-care workers by either the State forces or non-State groups, may result in health-care professionals fleeing, creating a dearth of trained medical professionals in these regions.[30] This may result in the increase of preventable health problems such as maternal health and child mortality and morbidity, besides the morbidity caused by conflict itself.[31]

E. Military use and militarization of health facilities

30. Militarization refers to the taking over or use of health facilities and services by armed forces or law enforcement agencies for achieving military objectives. Such military use poses a serious risk to the life and health of patients and health-care workers and erodes the role and perception of hospitals as a safe space to access health care. The impartiality of medical facilities is often compromised by the constant presence of security forces in hospitals and intimidation of patients and health-care workers in hospitals and clinics.[32] Hospitals and clinics are sometimes taken over by security forces in order to identify or arrest protestors injured in clashes with pro-Government forces. Those identified with protest-related injuries are often prevented from seeking emergency medical attention, removed from medical care, tortured or arrested (A/HRC/19/69, para. 63). Militarization of health care has also led to undesirable fallouts in respect of access to basic health care in some countries. Widespread fear of persecution leads civilians to avoid seeking treatment at health facilities and resort to treatment in unsafe conditions instead (ibid.). Such persecution violates the right to health of persons by impeding their access to quality health services.

31. In occupied territories and in areas where health care is funded or provided by the military, health-care workers have been targeted due to their perceived association with military forces.[33] Health professionals may also be targeted for providing services to anti-Government groups due to perceived support for such groups.[34] Misuse of health-care delivery programmes, such as vaccination programmes, to further military aims may erode the perception of impartiality of medical personnel and create mistrust of health workers among the civilian population, which may lead to killings of health-care workers and rejection of

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[30] David Stein and Barbara Ayotte, "East Timor: extreme deprivation of health and human rights", *Lancet*, vol. 354, No. 9195 (11 December 1999), p. 2075.

[31] Paul C. Webster, "Roots of Iraq's maternal and child health crisis run deep", *Lancet*, vol. 381, No. 9870 (16 March 2013), p. 892; Bernadette A. M. O'Hare and David P. Southall, "First do no harm: the impact of recent armed conflict on maternal and child health in sub-Saharan Africa", *Journal of the Royal Society of Medicine*, vol. 100, No. 12 (December 2007), p. 565.

[32] PHR, *Do no harm: a call for Bahrain to end systemic attacks on doctors and patients* (Cambridge, Massachusetts and Washington, D.C., April 2011), pp. 27-29.

[33] MSF, *In the Eyes of Others: How People in Crises Perceive Humanitarian Aid* (New York, 2012), pp. 134-154.

[34] Peter Apps, "Once seen as neutral, aid workers fight perceived bias", *Reuters*, 31 August 2007. Available from www.reuters.com/article/2007/08/31/us-aid-bias-idUSL31849991200/0831.

vaccination programmes to the detriment of public health.[35] Making health facilities, goods and services available through civilian, rather than military, structures may negate such apprehension and increase access to health-care services.

F. Post-conflict availability, accessibility, acceptability and quality of health facilities, goods and services

32. States, in the aftermath of conflict, are likely to face depletion of resources and experience political instability and disintegration of infrastructure, including health systems.[36] Most post-conflict reconstruction takes place after conflict has subsided to a certain degree, but continues or recurs in some parts of the country. Moreover, States that have already been in conflict situations are more likely to face repeated cycles of violence, which further burdens existing health systems and resources. Additionally, such States are marked by a high burden of disease, both mental and physical.[37]

33. Policies for States recovering from conflict need to focus on multiple issues such as reduction of the disease burden; immediate treatment of the injured and their long-term rehabilitation; reconstruction of infrastructures; increase in availability and accessibility of quality health facilities, goods and services; and sustainability of the health system. States should therefore formulate detailed and time-bound plans for the reconstruction of systems, including for delivery of underlying determinants of health, and restoring community and social structures, in a participatory and transparent manner. Participation of affected communities ensures responsive policies and promotes their ownership over such processes.

34. States should address imminent public health concerns, including injuries and disabilities caused during conflict, and less visible effects on health such as mental health. For example, post-traumatic stress disorder and depression are common in States recovering from conflict and should be effectively addressed.[38] Making mental health services available and accessible is essential and also helps empower people and communities affected by conflict and may enable them to bring about change in their social and political environment.[39]

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[35] Dara Mohammadi, "The final push for polio eradication", *Lancet*, vol. 380, No. 9840 (2 August 2012); Liz Borkowski, "Pakistan sees first polio case since vaccination camp disrupted", *Science Blogs*, 9 May 2013. Available from http://scienceblogs.com/thepumphandle/2013/05/09/pakistan-sees-first-polio-case-since-vaccination-campaign-disrupted/.

[36] Ibid.; Graeme MacQueen and Joanna Santa-Barbara, "Peace building through health initiatives", *British Medical Journal*, vol. 321, No. 7256 (29 July 2000), pp. 293-296.

[37] Bayard Roberts, Preeti Patel and Martin McKee, "Noncommunicable diseases and post-conflict countries", *Bulletin of the World Health Organization*, vol. 90, No. 2-2A (2012); Hazam Adam Ghobarah, Paul Huth and Bruce Russett, "The post-war public health effects of civil conflict", *Social Science and Medicine*, vol. 59, No. 4 (August 2004).

[38] F. Charlson and others, "Predicting the impact of the 2011 conflict in Libya on population mental health: PTSD and depression prevalence and mental health service requirements", *PLOS Medicine*, vol. 7, No. 7 (July 2012). Available from www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0040593.

[39] WHO Regional Office for Europe, "User empowerment in mental health" (Copenhagen, 2010), pp. 1-14, 1-2. Available from www.euro.who.int/__data/assets/pdf_file/0020/113834/E93430.pdf.

35. Due to the depletion of resources, exodus of doctors and health-care personnel and attacks on health-care workers,[40] countries and areas in post-conflict situations may be dependent on international donors and initiatives by non-governmental and intergovernmental organizations for the reconstruction of their health systems. Such health initiatives can be used as a tool for peacebuilding.[41] International aid agencies have used such strategies to break through ethnic divides, thereby increasing the availability and accessibility of health facilities, goods and services and reducing discrimination.[42] To ensure acceptability and accessibility of health services, international aid providers should also be cognizant of the culture of countries and communities. For example, in some countries, provision of health services to pregnant women by male doctors may not be culturally acceptable and may thus impede accessibility.[43]

36. Sustainability of donor-aided policies and initiatives is essential for ensuring long-term availability and accessibility of quality health facilities, goods and services in countries recovering from conflict. Ensuring participation and ownership in all phases of decision-making processes by the affected population is essential for the success and sustainability of donor-aided reconstruction of the health system.[44] Such health initiatives could be successful through continuous collaboration and cooperation with the local population, and by sharing technical know-how with them. An understanding of political realities, especially in areas of protracted conflict and transitioning societies is equally important to ensure sustainability of donor-aided initiatives.[45]

IV. Vulnerable groups

37. States should give particular attention to persons rendered vulnerable by conflict, such as women, children, older persons, people with disabilities and displaced communities. This requires States to address marginalization arising from social, political and economic exclusion; discrimination against persons belonging to or perceived to belong to a specific community; vulnerability due to ill-health; and conflict strategies that deliberately render certain communities vulnerable. These factors, individually or in combination, may expose certain groups to multiple vulnerabilities and an increased risk of violation of their right to health. Recognizing the diverse vulnerabilities in different communities and empowering them to participate in all decision-making processes that affect their health enable States to fulfil their obligation under the right to health during conflict and also promotes a sustainable recovery from conflict.

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[40] ICRC, "Health care in danger: making the case" (Geneva, 2012), p. 6.

[41] MacQueen and Santa-Barbara, "Peace building through health initiatives", p. 293.

[42] WHO Regional Office for Europe/Department for International Development (United Kingdom), "WHO/DFID peace through health programme: a case study prepared by the WHO field team in Bosnia and Herzegovina", document EUR/ICP/CORD 03 05 01 (Copenhagen, September 1998).

[43] Rita Giacaman, Hanan F. Abdul-Rahim and Laura Wick, "Health sector reform in the Occupied Palestinian Territories: targeting the forest or the trees?" *Health Policy Plan*, vol. 18, No. 1 (March 2003), p. 59.

[44] Nelson Martins and others, "Reconstructing tuberculosis services after major conflict: experiences and lessons learned in East Timor", *PLOS Medicine*, vol. 3, No. 10 (October 2006), pp. 1765-1775.

[45] Ibid.; Giacaman, Abdul-Rahim and Wick, "Health sector reform in the Occupied Palestinian Territories", p. 10.

A. Marginalized communities

38. Communities excluded from social, political and economic institutions are often marginalized and inhabit areas marked by weak infrastructure and poor governance, such as urban slums, ghettos and border areas. The impact of conflict may further devastate underlying determinants, such as food and housing, and disproportionately increase the vulnerability of marginalized communities to ill-health. This vulnerability is heightened during conflict when health resources are inappropriately and inequitably distributed prior to and after conflict.

39. Unaffordable health-care services, high taxes and confiscation of essential supplies by parties to the conflict increase the vulnerability of marginalized communities.[46] Accessibility may further be hindered due to lack of linguistic and culturally appropriate health services and information. Failure to recognize the different needs of marginalized communities may deter them from accessing health care, as well as contribute to a profound sense of isolation and disempowerment.

40. The health needs of certain groups are often overlooked in conflict due to limited or suspended services. Older persons are more at risk in conflict due to poor mobility and are less able to travel to health facilities. They may be unable to carry heavy packages of food or containers of water, and often live without family support, which renders them vulnerable to higher levels of malnutrition and disease.[47] Similarly, persons with disabilities, often abandoned by families fleeing conflict, may face greater health and safety risks.[48] Many facilities are unable to provide children with disabilities with the treatment and care suited to their physical developmental needs, hampering their ability to enjoy their right to health.[49]

B. Displaced communities

41. Conflicts often result in displacement of people, within States and across borders. Displaced persons may be deprived of the same rights and underlying determinants as host communities.[50] A large number of displaced persons may be forced to migrate to relief camps that are characterized by dilapidated and overcrowded conditions where basic services are inadequate, contributing to the spread of communicable diseases. Displaced persons may also be forced to migrate to urban slums, which renders them susceptible to vulnerabilities arising not only from a lack of capacity and resources, but also from the unwillingness of the State to address their needs.

42. Moreover, displaced persons are particularly vulnerable when their legal status prevents them from accessing health facilities, goods and services and availing

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[46] Minority Rights Group (MRG), *Uganda: The Marginalization of Minorities* (London, MRG International, 2001), p. 17.

[47] Unni Karunakara and others, "Ending neglect of older people in the response to humanitarian emergencies", *PLOS Medicine*, vol. 9, No. 12 (December 2012), pp. 1-3.

[48] HRW, *As If We Weren't Human: Discrimination and Violence against Women with Disabilities in Northern Uganda* (New York, 2010), p. 29.

[49] Tami Tamashiro, "Impact of conflict on children's health and disability", paper commissioned for the Education for All Global Monitoring Report 2011, *The Hidden Crisis: Armed Conflict and Education* (Paris, United Nations Educational, Scientific and Cultural Organization, 2011).

[50] IRC, "Syria: a regional crisis", 2013, p. 12.

themselves of economic opportunities.[51] Many may be forced to work in poor or unsafe working conditions, further exposing them to poor health.[52] Competing demands for access to health care and the underlying determinants of health may lead to rising tensions at the expense of both host and displaced communities.[53] Displaced communities may consequently face discrimination in accessing health facilities, goods and services and underlying determinants.

C. Women

43. Conflict may aggravate women's vulnerability to ill-health, discrimination and gender-based violence. Women often experience higher incidence of poor health outcomes in conflict owing to their physical and reproductive needs during pregnancy and childbirth.[54] Most maternal deaths in conflict occur during delivery or in the immediate post-partum period due to lack of availability of quality reproductive and maternal care, such as family planning, emergency obstetric services, and pre- and post-natal care.[55] Women in conflict situations are more likely to turn to unsafe abortion services when facing an unplanned pregnancy.[56]

44. Women are also often primary caretakers in conflict situations and may struggle to provide for their families, neglecting their own needs. Unequal access to resources such as land, employment and financial loans may leave many women and their families destitute and vulnerable.[57] Faced with limited choices, women may turn to employment in low-skilled jobs and in the informal sector, which yields lower benefits and exposes them to danger and exploitation.[58] Women who depend on armed groups and aid agencies may also engage in sex work in exchange for money, shelter, food or other basic necessities.[59] This may further expose women to increased risk of HIV and sexually transmitted infections.[60]

45. Mass displacement, breakdown of community and family networks, and institutional collapse may create a vacuum in which women and young girls are

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[51] Office of the United Nations High Commissioner for Refugees (UNHCR), "Syria regional response plan: January to June 2013" (Geneva, 2013), pp. 11, 39. Available from www.unhcr.org/.

[52] Ibid.

[53] IRC, "Syria", p. 13.

[54] ICRC, "Addressing the needs of women affected by armed conflict" (Geneva, 2004), pp. 10, 121, 133.

[55] MSF, "Maternal death: the avoidable crisis" (New York, 2012); N. Howard and others, "Reproductive health for refugees by refugees in Guinea III: maternal health", *Conflict and Health*, vol. 5, No. 5 (12 April 2011), p. 1.

[56] United Nations Population Fund (UNFPA), "The impact of armed conflict on women and girls: a consultative meeting on mainstreaming gender in areas of conflict and reconstruction, Bratislava, 13-15 November 2001" (New York, 2002), p. 44.

[57] Austrian Development Agency, "Focus: women, gender and armed conflict" (Vienna, 2009), pp. 2-3. Available from www.oecd.org.

[58] *Women, Peace and Security* (United Nations publication, Sales No. E.03.IV.9), pp. 115-117.

[59] Kirsti Lattu, "To complain or not to complain still the question: consultations with humanitarian aid beneficiaries on their perceptions of efforts to prevent and respond to sexual exploitation and abuse" (Geneva, Humanitarian Accountability Partnership, 2008), pp. 20-22.

[60] WHO Regional Office for Europe, "Violence against women living in situations of armed conflict" (Copenhagen, 2000), p. 13.

vulnerable to sexual violence.[61] They face a heightened risk of sexual exploitation and trafficking, as well as increased domestic violence and abuse from family members. Health facilities that lack qualified health professionals, patient referral mechanisms and psychological counselling may be unable to identify and respond to these forms of conflict-related sexual violence. This is especially true when health services are restricted to sexual violence perpetrated by armed groups.[62] The stigma associated with sexual violence and HIV and the absence of adequate protection mechanisms may also contribute to negative physical and mental health outcomes. Stigma, abandonment by families and communities, and retribution from perpetrators create an atmosphere that perpetuates gender-based violence and leads to the exclusion and disempowerment of survivors. The failure to provide services that promote the safety and respect the confidentiality of survivors undermines their full participation in society, particularly in post-conflict reconstruction efforts.

D. Children

46. Children are particularly vulnerable in conflict due to poor hygiene and food insecurity.[63] Malnutrition, in particular, undermines children's immunity and resistance to preventable and communicable diseases, such as diarrhoea or malaria.[64] The breakdown of disease surveillance and vaccination systems also contributes to the vulnerability of children to ill-health and hinders their right to health.[65]

47. Conflict may also have a devastating psychological impact on a child's well-being and development. Distressing experiences, abuse and chronic stress may increase the risk of trauma, particularly where children are separated from their families. Mental health needs of children may, however, be left unaddressed due to the unavailability of psychosocial services.[66]

48. Conflict may also result in children adopting new roles and responsibilities, which may increase their vulnerability to sexual violence and exploitation.[67] Health facilities in conflict often lack child-appropriate services for survivors of sexual violence, particularly for boys. Exposure to sexual violence increases the risk of further violations for girls. For example, marriage to the perpetrator is often seen as

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[61] UNFPA, "HIV/AIDS, gender and conflict situations", p. 1. Available from www.unfpa.org/hiv/docs/factsheet_conflict.pdf.

[62] Human Security Research Group, *Human Security Report 2012: Sexual Violence, Education and War: Beyond the Mainstream Narrative* (Vancouver, Human Security Press, 2012), pp. 34-35, 45.

[63] International Bureau for Children's Rights (IBCR), *Children and Armed Conflict: A Guide to International and Humanitarian Law* (Montreal, 2010), p. 160.

[64] Flavia Bustreo and others, "Improving child health in post-conflict countries: can the World Bank contribute?" (Washington, D.C., World Bank, 2005).

[65] Ibid.; IBCR, p. 160.

[66] M. Hasanović and others, "Psychological disturbances of war-traumatized children from different foster and family settings in Bosnia and Herzegovina", *Croatian Medical Journal*, vol. 47, No. 1 (2006), pp. 86-87.

[67] Watch List on Children and Armed Conflict, "Caught in the middle: mounting violations against children in Nepal's armed conflict" (New York, 2005), pp. 30-31.

a means of "protecting a girl's honour".[68] However, forcing survivors of sexual violence to marry their attackers re-victimizes them and results in the legitimization of the actions of the perpetrator and social acceptance of sexual violence (see A/66/657-S/2012/33).

Conflict strategies

49. As noted by the Security Council (resolution 1820 (2008)) and others,[69] certain civilians may be targeted on the basis of their perceived or actual association with ethnic, religious or political groups. Such strategies infringe human dignity and are manifestly incompatible with the right to health. In certain circumstances, they may also qualify as crimes against humanity, genocide or war crimes. For example, the use of gender-based violence as a strategy of conflict has been well documented.[70] Such violence can include incestuous rape and public rape, rape as a deliberate vector of HIV, camps specifically designed for forced impregnation of women, and premeditated rape as a tool of political repression.[71] Women and girls are common targets of sexual violence, although men and young boys may also be targeted with equal severity.[72] As the United Nations High Commissioner for Human Rights has noted (see E/CN.4/2004/13) among others,[73] armed groups may also specifically target sex workers, sexual and ethnic minorities and other communities as a tool for "social cleansing" of "undesirable elements". By treating civilians as objects of conflict, the physical and psychological impact of sexual violence may extend beyond immediate survivors and disempower whole communities.[74] Due to the stigma attached to sexual violence, survivors are often

[68] Save the Children, "Unspeakable crimes against children" (London, 2013), p. 7; Megan Bastick, Karin Grimm and Rahel Kunz, *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector* (Geneva, Geneva Centre for the Democratic Control of Armed Forces, 2007), p. 14.

[69] Inter-American Commission on Human Rights, "Violence and discrimination against women in the armed conflict in Colombia". OEA/Ser.L/V/II, doc.67, 16 October 2006, para. 47.

[70] The International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have upheld convictions of sexual violence as an instrument of crimes against humanity (ICTR, *Prosecutor v. Akayesu*, case No. ICTR-96-4-T, judgement of 2 September 1998, para. 596); war crimes (ICTY, *Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landzo*, case No. IT-96-21-T, judgement of 15 November 1998, para. 495); and indicia of enslavement (ICTY, *Prosecutor v. Dragoljub Kunerac, Radomir Kovas and Zoran Vukovic*, case Nos. IT-96-23-T and IT-96-23/1-T, para. 543).

[71] Obijiofor Aginam, "Rape and HIV as weapons of war" (Tokyo, UNU Press, 27 June 2012). Available from http://unu.edu/publications/articles/rape-and-hiv-as-weapons-of-war.html; Anuradha Kumar, *Human Rights: Global Perspectives* (New Delhi, Sarup & Sons, 2002), pp. 101-152; Bülent Diken and Carsten Bagge Lausten, "Becoming abject: rape as a weapon of war", *Body & Society*, vol. 11, No. 1 (2005), p. 115.

[72] Sandesh Sivakumaran, "Sexual violence against men in armed conflict", *European Journal of International Law*, vol. 18, No. 2 (2007), pp. 253, 263.

[73] Maria Zea and others, "Armed conflict, homonegativity and forced internal displacement: implications for HIV among Colombian gay, bisexual and transgender individuals", *Culture, Health, and Sexuality*, vol. 15, No. 7 (April 2013), p. 8.

[74] HRW, *The War Within the War: Sexual Violence against Women and Girls in Eastern Congo* (New York, 2002), p. 41.

forced into silence and excluded from their communities.[75] The impact of sexual violence on the mental health of survivors, as well as their family and community may endure for generations.[76] Sexual violence also compromises the participation of targeted communities in public health efforts long after conflict has ended.

50. Parties to conflict may also use health services as a strategy to target specific communities. Parties may deliberately deny humanitarian aid and health services to certain individuals or communities based on their ethnic, religious or political affiliation.[77] Destruction of underlying determinants of health, such as by poisoning wells and burning farmland, is another strategy that may deny affected communities a life of dignity and well-being.[78] Such strategies may undermine the ability of targeted groups to respond to serious health needs.[79] Groups thus targeted may be unable to access nutritious food, hygiene or medical care, which may prevent them from enjoying their right to health. They may also be excluded from participation in democratic decision-making, including decisions on health services, which may perpetuate health inequities in post-conflict settings.

V. Obligations of entities other than the primary State

51. The primary responsibility for realizing the right to health in conflict lies with States who are involved in the conflict. However, other States and non-State actors, including armed groups, international organizations and humanitarian non-governmental organizations, also bear obligations towards the realization of the right to health of affected populations.

A. International obligations

52. According to the International Covenant on Economic, Social and Cultural Rights, all States have an obligation to take steps, individually and through international cooperation and assistance, towards the full realization of economic, social and cultural rights, including the right to health. To comply with their international obligations, States must respect the right to health of populations in other countries, protect against violations by third parties where they are able to influence those third parties through legal or political means, and facilitate access to essential health services in other countries, depending on the availability of resources. In particular, States have an obligation to provide humanitarian aid in disasters and emergencies, including conflict and post-conflict situations.

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[75] WHO, "Rape: how women, the community and the health sector respond" (Geneva, 2007). Available from www.svri.org/rape.pdf, pp. 12-14; Nadera Shalhoub-Kevorkian, "Towards a cultural definition of rape", *Women's Studies International Forum*, vol. 22, No. 2 (March/April 1999), pp. 165-166.

[76] Colleen Kivlahan and others, "Rape as a weapon of war in modern conflicts", *British Medical Journal*, vol. 340, No. 3270 (June 2010), pp. 468-469.

[77] MSF, "Syria: medicine as a weapon of persecution" (New York, 2012).

[78] PHR, *Darfur: Assault on Survival: A Call for Security, Justice and Restitution* (Washington, D.C., 2006), pp. 37-38.

[79] Ibid.

53. As an aspect of international cooperation and assistance, States should respect, protect and fulfil the right to health of people fleeing from conflict situations. The burden of caring for populations displaced by conflict often falls on States that are least equipped to bear it.[80] In this regard, other States should ensure that they provide appropriate international assistance, including aid, to countries facing an influx of persons displaced by conflict and measures to assist in their resettlement. States should also ensure the availability and accessibility of quality health facilities, goods and services and the underlying determinants of health to such persons, whether or not they are nationals of the State. States should also refrain from policies that violate the right to health such as mandatory detention or deportation.[81]

54. States also frequently impose economic sanctions in conflict to coerce parties to the conflict, or to control the flow of resources to conflict-affected areas.[82] Such sanctions may adversely impact on the right to health of civilian populations, not only by restricting medical supplies, but also by increasing administrative delays for essential goods and services, worsening poverty and reducing the resources available for health, infrastructure and education systems.[83] To ensure the full enjoyment of the right to health of people affected by conflict, medical supplies and equipment, water, food and other essentials important for the health of the population should never be placed under sanctions. Furthermore, all sanctions should be monitored both before and after imposition for their effect on the right to health, and should be transparent and responsive, regardless of their political purpose.[84]

B. Non-State armed groups

55. The majority of contemporary conflicts are non-international armed conflicts involving one or more non-State armed groups.[85] These non-State armed groups may significantly affect the enjoyment of the right to health in conflict. One study has found that non-State armed groups are as likely as State forces to attack or interfere with health facilities, and nearly twice as likely to enter hospitals for illegitimate purposes.[86]

56. There is growing acceptance that non-State armed groups reaching a certain level of organization and control should respect international humanitarian law and human rights law.[87] Common article 3 of the Geneva Conventions of 1949 and Additional Protocol II thereto both address parties to the conflict, which are

[80] UNHCR, *Global Trends 2012* (Geneva, 2013), p. 2.

[81] Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), paras. 43 (a) and 54. On the effect of mandatory detention on the right to health, see, e.g., the report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health: mission to Australia (A/HRC/14/20/Add.4), paras. 92 and 97.

[82] Committee on Economic, Social and Cultural Rights, general comment No. 8 (1997), para. 2.

[83] Ibid., paras. 3-6.

[84] Ibid., paras. 12-13.

[85] World Bank, *World Development Report 2011*, p. 52.

[86] ICRC, *A Sixteen-Country Study*, pp. 8-10.

[87] See Andrew Clapham, "Non-State actors", in Daniel Moeckli and others (eds.), *International Human Rights Law*, 2nd ed. (Oxford University Press, forthcoming).

understood by international courts to include organized non-State armed groups.[88] Similarly, fact-finding commissions have concluded that armed groups that are stable, organized, and have effective control over territory have legal personality regarding a defined range of international humanitarian law and human rights obligations (see A/HRC/19/69, paras. 106-107, and A/HRC/17/44). These include obligations to refrain from attacking or interfering with humanitarian facilities, vehicles, and personnel, and to refrain from harming civilian populations, including through sexual violence or destroying food or water systems.[89]

57. Non-State armed groups are also bound by the expectation of the international community that they will respect norms contained in the Universal Declaration of Human Rights, especially where they exercise control over territory (A/HRC/2/7, para. 19, and E/CN.4/2006/53/Add.5, paras. 25-26). Additionally, the right to health framework recognizes the responsibility of all sectors of society towards realizing the right to health,[90] which includes the responsibility of non-State actors such as armed groups and other arms bearers in conflict. Finally, armed groups have been held accountable for obligations voluntarily assumed through agreements, unilateral statements and monitoring systems under the Security Council (resolution 1998 (2011)), which have included both obligations to respect human rights and to protect or fulfil them where armed groups exercise the control and authority to do so.[91] Armed groups must therefore, at the minimum, respect human rights, including the right to health, and may assume further obligations to protect or fulfil human rights. The obligation of States to protect people against third-party violations continues regardless of whether armed groups are present on its territory, and the presence of third-party armed groups should not be used by States as an excuse to abdicate from their right to health responsibilities in conflict areas.

58. Nonetheless, there is currently a gap in the delineation of the human rights responsibilities of non-State armed groups and in mechanisms for holding them accountable, other than criminal prosecutions. In this respect, the obligation of the State to facilitate the discharge of right to health responsibilities by all sections of society becomes particularly important. States, civil society and international organizations have successfully facilitated agreements on human rights and humanitarian issues with non-State armed groups, including agreements to provide "days of tranquillity" for health workers to safely provide vaccinations.[92] States should adopt, support and expand these initiatives to protect and fulfil the right to health in conflict and minimize the impact of conflict on vulnerable groups.

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[88] Ibid.; *Prosecutor v. Akayesu*, para. 611; International Court of Justice, *Military and Paramilitary Activities in and around Nicaragua (Nicaragua v. United States of America), Judgments, I.C.J. Reports 1986*, p. 14, para. 119; Inter-American Court of Human Rights, *Abella v. Argentina*, Report No. 55/97, case No. 11.137, 18 November 1997.

[89] "Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General", 25 January 2005, paras. 165-166.

[90] Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), para. 42.

[91] Geneva Call, Deed of commitment under Geneva Call on the protection of children from the effects of armed conflict, para. 7. Available from www.genevacall.org; Agreement on Human Rights between El Salvador and the Frente Farabundo Marti para la Liberación Nacional, 26 July 1990. Available from www.geneva-academy.ch.

[92] Leonard Rubenstein, "Defying expectations: polio vaccinations amid political and armed conflict". Peace Brief (Washington, D.C., United States Institute of Peace, 2010). Available from www.usip.org/.

59. The Special Rapporteur recognizes that parties to conflict may be reluctant to conclude such agreements for fear of legitimizing the other party or due to concerns that they may concede control over territory or governmental functions.[93] However, many of these objections can be overcome by measures such as decoupling human rights agreements from ceasefire or power-sharing negotiations, explicitly stating that such negotiations will not affect political recognition or mediating negotiations through a mutually trusted third party, and should not be seen as insurmountable.[94] States should also ensure that such initiatives are not hampered by overly broad counter-terrorism laws. Many counter-terrorism laws currently criminalize all forms of engagement with organizations listed as terrorist groups, deterring many humanitarian agencies from engaging with armed groups on their human rights responsibilities for fear of being labelled as or connected to armed groups termed "terrorists".[95]

C. Intergovernmental and non-governmental organizations

60. The right to health framework recognizes that international and non-governmental organizations have particular importance in relation to disaster relief and humanitarian assistance in times of emergencies, including providing assistance to refugees and internally displaced persons.[96] International and non-governmental organizations may also be involved in conflict as monitors, mediators, peacekeeping forces and territorial administrators. Such organizations should ensure that they take due account of the right to health in their decisions and activities, including by adopting rights-based health policies, paying special attention to the needs of vulnerable groups and ensuring participation of affected communities. They should ensure that robust accountability mechanisms exist, particularly in peacekeeping and peace-enforcement situations. These include effective disciplinary systems, clear operational standards, systems for monitoring and data collection, and accessible independent dispute-resolution systems, especially for international organizations that enjoy immunity from domestic jurisdiction.

VI. Accountability and remedies

61. Accountability is an essential aspect of the right to health framework. It requires independent monitoring, prompt investigations, transparent governance, including collecting and disseminating accurate and complete information to the public, and access to remedies for victims of violations. These requirements are also addressed under international humanitarian law, which obliges States to prevent,

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[93] See Geneva Academy of International Humanitarian Law and Human Rights, *Rules of Engagement: Protecting Civilians through Dialogue with Armed Non-State Actors* (Geneva, 2011), pp. 5-7, Available from www.geneva-academy.ch. See also the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/6/17 and Corr.1), paras. 42-50.

[94] Geneva Academy, *Rules of Engagement*, pp. 8-57.

[95] Naz K. Modirzadeh, Dustin A. Lewis and Claude Bruderlein, "Humanitarian engagement under counter-terrorism: a conflict of norms and the emerging policy landscape", *Review of the International Committee of the Red Cross*, vol. 93, No. 883 (September 2011), p. 623.

[96] Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), para. 65.

investigate and punish violations of international humanitarian law.[97] Clear policies and codes of conduct should be in place within the military, police force, and medical institutions to protect the right to health in conflict.[98]

A. Monitoring and transparency

62. Violations of the right to health in conflict, including attacks on, and interference with, the delivery of health care, are often not fully captured in current monitoring systems.[99] Monitoring of such violations in conflict and post-conflict situations is often poor or incomplete, due to insecurity and lack of systematic data collection and dissemination by States and international organizations.[100] Monitoring mechanisms may focus excessively on high-profile issues such as attacks on international aid workers rather than more common violations such as threats against local workers or damage to underlying determinants.[101] The practice of retaliating against whistleblowers may also mean that health-care workers and affected populations, who are in the best position to report violations of the right to health, may be reluctant to do so for fear of being unable to provide or access medical care.

63. Security concerns should not be used to justify blanket bans on reporting violations, particularly where a less restrictive means of ensuring security is available, such as allowing anonymous reporting of incidents.[102] States should ensure that accurate information is available to independent monitors and should not retaliate against persons who report violations. States should also prevent and investigate threats and attacks against such persons by both State agents and third parties. States should especially promote community-based monitoring initiatives, which ensure that the views of the local population are taken into account, and provide transparent and reliable information to civil society and affected communities.

64. Lack of transparency and accountability in health programming and governance in conflict also undermines confidence between affected populations and States, impeding attempts to better provide and protect health services in conflict-affected areas and preventing accurate assessments of aid allocation. This can increase the risk of further violations and the difficulty of remedying them. In particular, lack of transparency and accountability discourages aid to conflict areas, depriving devastated health systems of much-needed funding. Conflict-affected countries receive 43 per cent less aid than countries with similar development needs,

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[97] See sources cited in Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, vol. I, *Rules* (Cambridge, United Kingdom, ICRC and Cambridge University Press, 2005), rule 158. Available from www.icrc.org.

[98] Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), paras. 55-56, 59.

[99] Leonard Rubenstein, "Protection of health care in armed and civil conflict: opportunities for breakthroughs" (Washington, D.C., Center for Strategic and International Studies, 2012), pp. 2-4. Available from http://csis.org/files/publication/120125_Rubenstein_ProtectionOfHealth_Web.pdf.

[100] Ibid., p. 2.

[101] ICRC, "Health care in danger: violent incidents affecting health care: January to December 2012" (Geneva, 2013), p. 5.

[102] P. J. Jennings and S. Swiss, "Supporting local efforts to document human rights violations in armed conflict", *Lancet*, vol. 357, No. 9252 (January 2001), p. 302.

with increased risks of misappropriation and monitoring difficulties being two reasons for this disparity.[103]

B. Remedies

65. Prompt, effective and adequate remedies for violations are a key component of accountability. Under the right to health framework, any person or group whose right to health has been violated should have access to effective judicial or other appropriate remedies at both national and international levels, including adequate reparations, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition. States should provide effective, prompt and accessible means of claiming remedies within judicial and administrative systems. They should also ensure that peacebuilding processes such as amnesties, statutes of limitation or exemptions from civil or criminal action for military or police forces do not obstruct access to remedies, and provide means for claiming remedies against both State and non-State actors.

66. Remedies should not be limited to punitive actions against perpetrators but should also be directed towards restoring the right to health of affected persons and bridging the divisions in society that may arise from or give rise to continued conflict. As such, the remedies of satisfaction and guarantee of non-repetition, which include measures to cease current violations and prevent future violations as noted by the General Assembly in its resolution 60/147, are particularly important given the ongoing and systemic effects of conflict on the right to health. In the context of the right to health, guarantees of non-repetition include improving protection of health workers in conflict areas; providing clear codes of conduct on the appropriate use of medical facilities in conflict; training of, and awareness-raising among, appropriate actors, including law enforcement, on all aspects of the right to health; undertaking legal reforms including enacting laws that mandate non-interference with the impartial provision of health care; and setting up independent dispute settlement and monitoring systems. The remedy of satisfaction includes judicial and administrative sanctions, acknowledgement of wrongdoing, and effective measures to end continuing violations.

67. Remedial measures should involve removing discriminatory policies and laws, and formulating and implementing comprehensive national health plans to realize the right to health post-conflict. States should also provide platforms to heal the rifts in society caused by conflict. Mechanisms such as truth and reconciliation commissions, international and hybrid criminal tribunals, international and regional human rights mechanisms and fact-finding missions can provide important complements to judicial and administrative remedies at the national level in this regard. At all levels, the participation of affected communities in remedial processes is essential to ensuring a meaningful and sustainable resolution of the conflict.

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[103] Preeti Patel and others, "A review of global mechanisms for tracking official development assistance for health in countries affected by armed conflict", *Health Policy*, vol. 100, Nos. 2-3 (2011), p. 117.

VII. Conclusion and recommendations

68. **A right to health approach to conflict situations obliges States to take continuous and concrete steps towards the realization of the right to health of persons affected by conflict, including those who are actively involved in conflict. The Special Rapporteur recommends that States enact and implement laws and policies which respect, protect and fulfil the right to health of affected populations, especially vulnerable groups, prior to, during and after conflict.**

69. **The Special Rapporteur emphasizes that the effective participation of affected communities, especially vulnerable groups, is essential to the right to health framework. Affected communities should, at all times, be involved in the formulation, implementation and monitoring of decisions and agreements that affect their right to health, including policies regarding conflict situations and post-conflict situations.**

70. **The Special Rapporteur urges States involved in conflict situations:**

(a) **To make resources available, including through humanitarian assistance, to fulfil their obligations under the right to health. States should fulfil their non-derogable core obligations under the right to health at all times;**

(b) **To ensure the availability, accessibility and acceptability of quality health facilities, goods and services to all people involved in and/or affected by conflict, without discrimination. Particular attention should be given to vulnerable groups;**

(c) **To avoid formulating laws and policies which criminalize provision of health services by health professionals to people involved in conflict, or repeal them where they exist. States should also refrain from interfering with the duty of health professionals to provide services in an impartial manner;**

(d) **To refrain from obstructing, restricting or limiting access to health facilities, goods and services. In cases where such barriers become necessary, restrictions should be proportionate to the objective sought and should follow the least restrictive alternative;**

(e) **To abstain from attacking health facilities, goods, services and workers, especially as a conflict strategy, including in areas controlled by armed groups. States should also take measures to protect health facilities, goods, services and workers from attacks by non-State armed groups;**

(f) **To forgo militarizing health facilities, goods and services;**

(g) **To engage with non-State armed groups, through voluntary agreements, to facilitate access to health facilities, goods and services;**

(h) **To ensure effective monitoring of violations of the right to health during conflict by making information available and accessible to independent monitoring groups, including community-based monitoring groups.**

71. **The Special Rapporteur urges States recovering from conflict:**

(a) **To formulate and implement plans for the reconstruction of infrastructure and delivery of underlying determinants, with particular attention to the needs of vulnerable groups. States should formulate laws to**

ensure the equitable distribution of underlying determinants and for the realization of the right to health of all people, especially vulnerable groups;

(b) To make sufficient resources available to implement reconstruction policies. Donor-funded initiatives should supplement and support national health policies where required and should be implemented with the participation of affected populations;

(c) To ensure the availability and accessibility of essential and primary health facilities, goods and services, including mental health services, to people affected by and involved in conflict, especially vulnerable groups;

(d) To establish access to justice mechanisms to address the violations of rights and provide remedies for such violations, including restitution, compensation, guarantees of non-repetition and satisfaction;

(e) To provide peacebuilding mechanisms for meaningful and sustainable resolution of conflicts through restorative justice processes such as fair and transparent truth and reconciliation commissions.

72. The Special Rapporteur urges States to fulfil their international obligations and, in particular:

(a) To ensure transparency in the implementation of aid programmes;

(b) To guarantee that economic sanctions imposed on States during conflict do not hinder the realization of the right to health of people affected by conflict;

(c) To respect, protect and fulfil the right to health of persons fleeing from conflict situations.

73. The Special Rapporteur urges international and non-governmental organizations undertaking humanitarian activities in conflict:

(a) To adopt health initiatives in line with the right to health framework, which includes ensuring the participation of affected communities. These initiatives should promote traditional medicines and practices which are in line with the right to health;

(b) To establish effective accountability mechanisms for violations of the right to health by their personnel, such as members of peacekeeping forces and humanitarian workers.

74. The Special Rapporteur urges non-State armed groups:

(a) To respect norms of international human rights and humanitarian law, including those related to the right to health;

(b) To comply with agreements that may have been entered into to protect the right to health of affected populations.